TRINITY COLLEGE, DUBLIN.

ELECTION OF FELLOWS.

1872.

Cairns.

REPORT,

&c. &c.

ELECTION OF FELLOWS OF TRINITY COLLEGE.

REPORT

OF THE

PROCEEDINGS AT A VISITATION

HOLDEN IN

(TRINITY COLLEGE) DUBLIN, – Univ.

ON

TUESDAY, THE 11TH, SATURDAY, THE 15TH, TUESDAY, THE 18TH OF JUNE, AND SATURDAY, THE 6TH OF JULY, 1872,

BEFORE

THE RIGHT HON. SIR JOSEPH NAPIER, BART.,

VICE-CHANCELLOR OF THE UNIVERSITY;

AND

THE RIGHT HON. AND MOST REV. RICHARD CHENEVIX, D.D.,

LORD ARCHBISHOP OF DUBLIN,

THE VISITORS OF THE COLLEGE.

BY

STEPHEN N. ELRINGTON, ESQ.,

BARRISTER-AT-LAW.

DUBLIN:

HODGES, FOSTER, AND CO., GRAFTON-STREET,

BOOKSELLERS TO THE UNIVERSITY.

1872.

DUBLIN:
PRINTED AT THE UNIVERSITY PRESS,
BY M. H. GILL.

Counsel for the Provost and Senior Fellows.

THE RIGHT HON. JOHN THOMAS BALL, Q.C., LL.D., M.P.
CHARLES HENRY TANDY, ESQ., Q.C.
THOMAS E. WEBB, LL.D., *Professor of Civil Law.*

SOLICITOR—JOHN H. NUNN, ESQ.

Counsel for Petitioners (GEORGE M. MINCHIN A. M., *and* ARTHUR W. PANTON, A. B.)

CHRISTOPHER PALLES, Q.C., *Solicitor-General for Ireland.*
ISAAC BUTT, Q. C., LL.D., M. P.
JOHN MURRAY, A. B.

SOLICITORS—FALKNER AND HONE.

Counsel for Respondent (FREDERICK PURSER).

H. P. JELLETT, ESQ., Q.C.
E. T. BEWLEY, A.M.

SOLICITOR—BENJAMIN WHITNEY, ESQ.

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INTRODUCTION.

THE first question that was raised in this case, by the Petition presented to the Visitors of the College against the election of Mr. Frederick Purser to a Fellowship on the last Trinity Monday, would appear to be this:—Whether, inasmuch as at the time of the election he was a member of the Moravian Church, he was not disqualified to be a Fellow of Trinity College? It was contended that, according to the intention of the Founders of the College, a Fellowship could not be conferred on any who was not at the time a member of the Church of Ireland.

The Visitors had to ascertain the intention, by a reference to the Charters and Statutes of the College, to be interpreted (as is directed by the Founder), according to the plain literal and grammatical sense of the words in which that intention is expressed. The decision may be said to be this—that as there is not any disqualification therein distinctly stated, or clearly and manifestly implied, within which the case of Mr. Purser had been brought, he was not disqualified as alleged.

Queen Elizabeth was the original Founder of the College, but her Charter was afterwards merged in that of King Charles I., by whom a Code of Statutes for the College was also supplied. In these, an express provision is made for additions, alterations, and dispensations thereafter to be made by the King or his successors, according to the emergency of the times (*pro temporum ratione*). The effect is, that, when these are made, they become part of the foundation. Therefore, in ascertaining the intention of the Founder, it is necessary to take into account these alterations,

additions, and dispensations. In pursuance of the power thus reserved, the Code of College Statutes was revised and resettled in 1855; and the provisions for allowing Students of all religious denominations to be educated in the College, and to graduate in the University, without any interference with the rights of conscience, were formally incorporated into the revised Code.

The College, which at the first was mainly an Ecclesiastical foundation for the benefit of the Church, became, to a great extent, an Educational Institution for the benefit of the laity of all denominations. The number of Lay places for Fellows was increased from two to five; and, in addition, Dispensations were granted, from time to time, by which some of those who were elected were enabled to remain in College as Lay Fellows. The number of these has been on the increase since 1855. As there is a Lay period after election, legally secured to a Layman who has been elected to a Fellowship, with the contingency of a Lay place before this period expires, and the moral certainty of obtaining, upon request, a Dispensation from taking holy orders, at the close of this period; and as important changes have been recently made in the Statute Law of the Realm, the aspect of the case has been altered. In 1865, the Declaration of Conformity to the Liturgy of the Church of Ireland (which every Fellow of College had previously been obliged to subscribe under the Irish Act of Uniformity, on pain of the forfeiture of his Fellowship), was abolished; and since then the Oath prescribed to each Fellow after election has been changed into a Declaration; other oaths have been abolished. This may explain how and why it has been that a question like the present was not raised before these changes were made in the Statutes of the Realm and in the Statutes of the College.

In the time of King Charles I., the only Churches or religious denominations recognised by the law of Ireland, were the Established Church of Ireland, and the great historical rival by which it was confronted and opposed—the Roman Catholic Church. The members of the latter were excluded from privileges, of which eligibility for a Fellowship of the College was one. Provision

is expressly made in the College Statutes for this special exclusion, but no similar provision appears to have been therein made for the exclusion of the members of any Orthodox Protestant Church.

On the personal qualifications of the Candidates for Fellowship it is the peculiar province of the Provost and Senior Fellows to adjudicate. The Founder has expressly conferred this exclusive power on that body, to be executed under the sanction of an oath, by which they are solemnly sworn to elect according to their conscientious judgment, having regard to what the specified Statutes require as to these qualifications.

In the present case, as it was not alleged that the Electors had failed in the duty thus prescribed, the result was, that if Mr. Purser was not disqualified on the ground alleged in the Petition, his eligibility was not otherwise open to question before the Visitors.

The disqualification alleged, being a question upon which lawyers of eminence had arrived at different conclusions, and on which the Electors were not bound by their oath to adjudicate, was left by them for the decision of the Visitors. It was so left in order to prevent miscarriage or confusion in the Election, and to preserve intact the rights of all parties.

The main grounds of the decision on the first question appear to be these:—

1. The intention of the Founder, as collected from the words of the instruments of foundation, interpreted according to the Founder's direction.

2. The incorporation into the Foundation Code, of the alterations and additions whereby the College had become mainly an Educational Institution, for the benefit of the Laity of all denominations.

3. The changes in the law of the Realm by which the exclusion of Non-conformists from Fellowships had been effected.

4. The special delegation by the Founder to a select body, of the exclusive power of electing Junior Fellows, to be executed under the sanction of a prescribed oath, according to the conscientious judgment of the Electors.

5. The absence of a distinct disqualification, exception, or prohibition in the revised Code of Statutes of the College, or in the existing law of the Realm, by which members of Orthodox Protestant Churches would be disqualified.

The second question turned on the effect of the refusal of Mr. Purser to make the Declaration prescribed to every elected Fellow, to be made after his election, and before his admission to the full rights of Fellowship. The making of this Declaration is required to take place on the day after the election. Mr. Purser refused to make it, when required according to the law and usage of the College; the consequence of this refusal was held to be the forfeiture or loss, *ipso facto*, of the *Jus Societatis* which he had acquired by his election on the previous day. The clause of the Statute as to this does not avoid the election, but it makes the refusal a forfeiture *ipso facto* of the *Jus Societatis*.

Mr. Purser was unable conscientiously to adopt the commonly received interpretation of that part of the Declaration which relates to the Profession of theology; and although the current interpretation avoids the difficulty by which his conscience was embarrassed, this could not help him, when he was unable to adopt it.

The Report of the arguments before the Visitors in this interesting and important case, was taken in shorthand, and was afterwards carefully revised by the respective Counsel. The opinions of the Visitors were, for the most part, put in writing before they were delivered. In order to secure complete accuracy, the proofs of the arguments and opinions were submitted for a further revision; and the Editor has to express his gratitude for the valuable aid that has been afforded by the kindness and courtesy of these several parties.

PETITIONS AND ANSWERS.

In the Matter of the Election to Fellowships on Trinity Monday, 1872, *and the Appeal of* GEORGE M. MINCHIN, M. A., *and* ARTHUR W. PANTON, M. A.

TO THE RIGHT HONORABLE HUGH M'CALMONT, BARON CAIRNS, AND HIS GRACE THE LORD ARCHBISHOP OF DUBLIN, VISITORS OF THE COLLEGE OF THE HOLY AND UNDIVIDED TRINITY OF QUEEN ELIZABETH, NEAR DUBLIN.

THE HUMBLE PETITION

Of GEORGE M. MINCHIN, A. M., *of No.* 38, *Trinity College, Dublin, and* ARTHUR W. PANTON, A. M., *of No.* 25, *Trinity College, Dublin,*

SHOWETH—

I. That on and prior to the 13th day of May, 1872, two of the Fellowships of the said College were vacant.

II. That an examination was duly held, commencing on the 13th day of May, 1872, for the purpose of selecting out of the eligible candidates for the said Fellowships, the two who, on the general result of the said Examination, should obtain the highest marks.

III. That your Petitioners presented themselves as Candidates at the said Examination. Each of them is a member of the Irish Church, formerly the Established or Anglican Church in Ireland, and each of them fulfilled all the conditions imposed by the Statutes of said College on those who are eligible as Fellows.

IV. That one Frederic Purser also presented himself as a Candidate. The said Frederic Purser is a member of the Moravian Church, and was therefore ineligible as a Candidate at

the said Examination: his name was entered on the books of the said College as a member of the Moravian Church. In the year 1859 he was elected to a Non-Foundation Scholarship, being then considered ineligible to a Foundation Scholarship in the said College.

V. That on the 25th of May, 1872, and before the election hereinafter mentioned, your Petitioners served a notice on the Provost and each of the Senior Fellows of the said College in the words and figures following:—

"We, the undersigned Candidates for the Fellowships now "vacant in this College, hereby give you notice that one of the "Candidates for the said Fellowships, viz., Frederic Purser, is "ineligible as a Candidate, inasmuch as he is a member of the "Moravian Church.

"We beg further to apprise you that in case you elect him "to one of the said Fellowships, such election will be null and "void, as contrary to the Statutes of said College and to the "laws of the realm.

"Dated Saturday, the 25th day of May, 1872.

"ARTHUR W. PANTON.
"GEORGE M. MINCHIN.
"W. S. M'CAY.

"*To the Provost and Senior Fellows*
"*of Trinity College, Dublin.*"

VI. That your Petitioners further on the same day served a notice on the Provost, Senior Fellows, and Examiners for the said Fellowships, which was in the words and figures following:—

"We, the undersigned Candidates for the Fellowships now "vacant in this College, hereby give you notice that one of the "Candidates for said Fellowships, viz., Frederic Purser, is ineli-"gible as a Candidate, inasmuch as he is a member of the "Moravian Church.

"We beg further to apprise you that in case you elect him "to the Madden Premium, such election will be null and void, "as contrary to the trusts of the will of Samuel Molyneux "Madden, dated the 7th day of August, 1782.

"Dated Saturday, the 25th day of May, 1872.

"ARTHUR W. PANTON.
"GEORGE M. MINCHIN.
"W. S. M'CAY.

"*To the Provost, Senior Fellows,*
"*and Examiners for the vacant*
"*Fellowships, Trinity College,*
"*Dublin.*"

VII. That the said Examination was concluded on Saturday evening, the 25th day of May, 1872, and on the next Monday the said Candidates were declared to have answered in the following order of merit:—(1) The said Frederic Purser, (2) William S. M'Kay, (3) George M. Minchin, and (4) Arthur W. Panton.

VIII. That on Monday, the 27th day of May, 1872, the Provost and senior Fellows proceeded to elect two of the said Candidates to the two said Fellowships. The Reverend John A. Malet, D. D., one of the said Senior Fellows, refused to vote for the said Frederic Purser, on the grounds hereinbefore mentioned, viz.—that he was ineligible on account of his religion; but voted for the said George M. Minchin. The Provost and the other Senior Fellows voted for the said Frederic Purser, and the Provost declared that the said Frederic Purser was elected to one of the vacant Fellowships, and that the said William S. M'Cay was elected to the other.

The Provost and said Senior Fellows further awarded the Madden Premium to your Petitioner, George M. Minchin.

IX. On the following morning, viz., Tuesday, the 28th day of May, 1872, the Provost and Senior Fellows proceeded to the Chapel of the said College, for the purpose of administering the Declaration prescribed by the Statutes of the said College to the said Frederic Purser and William S. M'Cay, and of admitting them as Fellows of the said College.

X. That your Petitioner, George M. Minchin, presented himself at the said time in the said Chapel, and stated to the Provost and Senior Fellows that the said Frederic Purser was ineligible as a Candidate, and that he, the said George M. Minchin, claimed to be admitted to one of the said Fellowships, and offered to make the said Declaration. The Provost and Senior Fellows refused to admit him to one of the said Fellowships, but they directed him to lodge his statement and objection with the Registrar of the said College. The said George M. Minchin accordingly did so.

XI. The said Frederic Purser appeared at the said time in the said Chapel, but refused to make the said Declaration, and the Provost and Senior Fellows administered the said Declaration to the said William S. M'Cay, and duly admitted him to one of the said Fellowships.

XII. At a later hour, viz., half-past Five, P. M., on the same day, the Provost and Senior Fellows re-assembled in the said Chapel, in order, as your Petitioners believe, to ascertain whether the said Frederic Purser would then make the said

Declaration. He did not then appear, and consequently was not admitted to the said vacant Fellowship. The said George M. Minchin did then and there again present himself for admission to the said Fellowship, but the Provost and Senior Fellows refused to admit him.

XIII. The Provost and Senior Fellows did not then fill up the said second Fellowship, and still refuse to fill up the same.

XIV. The Provost and Senior Fellows elected your Petitioner, George M. Minchin to the Madden Premium.

MAY IT THEREFORE PLEASE YOUR LORDSHIPS to hold a Visitation in the said College to inquire into the matters aforesaid, and to declare that the said George M. Minchin was, under the foregoing circumstances, elected to one of the said Fellowships, and to direct the said Provost and Senior Fellows duly to admit him to the same.

Or to direct them to elect and admit him to the said vacant Fellowship.

And to direct the said Provost and Senior Fellows to award the Madden Premium to your Petitioner, the said Arthur William Panton.

Or for such other Declaration or Direction as to your Lordships may seem meet.

And your Petitioners will ever pray.

JOHN MURRAY.
C. PALLES.

FALKINER & HONE,
Solicitors for the Petitioners,
9 *Suffolk-street, Dublin.*

ANSWER

Of the PROVOST *and* SENIOR FELLOWS *of Trinity College, Dublin, to the Petition of Appeal in this Matter.*

To Paragraphs 1, 3, 5, 6, 9, 10, 12, and 13,—We admit the facts stated in these Paragraphs of the Petition.

To Paragraph 2,—We say that the purpose of the Examination held, commencing on the 13th day of May, 1872, is not correctly stated in said Petition. It was the Examination prescribed by the Statutes of the College to be held prior to the election on the following Trinity Monday to the then vacant Fellowships.

To Paragraph 4,—We are advised that Mr. Purser, although a member of the Moravian Church, was not ineligible as a Candidate at the Examination for Fellowship.

To Paragraph 7,—We say, that no such declaration as that stated in this Paragraph was made on the Monday following the 25th day of May, 1872.

To Paragraph 8,—We say, that it is not the fact, as therein stated, that the Rev. John A. Malet, D. D., one of the Senior Fellows, voted for the said George M. Minchin. The facts connected with the proceedings of the Board on Monday, the 27th day of May, 1872 (being Trinity Monday), are as follows:—

The Provost and Senior Fellows, and the other Examiners, assembled in the Board Room, and the returns of the answering were given in by the Examiners. Previously to the Board proceeding to the election to the vacant Fellowship, the attendance of Mr. Purser was required in the Board Room, when the Provost called his attention to the following clause in the Statutes, cap. IX. :—"Præterea nemo in Sociorum numerum eligatur, qui "Pontificiæ religioni, quatenus à Catholica et Orthodoxa dissentit, "et Romani Pontificis jurisdictioni per solennem et publicam de- "clarationem non renuntiaverit."

The Provost having asked Mr. Purser whether he fully assented to the Declaration in the above clause, Mr. Purser replied that he fully assented to it.

The Provost then further asked, whether Mr. Purser held any Article of Faith which had been adjudged to be Heresy by the Decrees of the first four General Councils, or any of them? To which he answered in the negative.

In reply to another question of the Board, Mr. Purser stated that he had frequently received the Holy Comunion in the Church of Ireland—the last occasion being recently in Belfast.

The Provost and Senior Fellows then proceeded to the Chapel, according to the Statutes, when the oath prescribed in cap. xxv.,—"De electionum formâ et tempore," was taken by each of the Electors. The Provost, in conjunction with the Vice-Provost and Dr. Hart, being the two most Senior Members present, collected the votes for the first of the vacant Fellowships. Seven votes were recorded for Mr. Purser, and one vote (Dr. Malet's) for Mr. W. S. M'Cay. The Provost thereupon declared Mr. Purser duly elected. A similar scrutiny having taken place for filling up the second of the vacant Fellowships, eight votes were recorded for Mr. M'Cay, who was thereupon declared by the Provost to be duly elected to the second vacant Fellowship.

The majority of the Examiners subsequently certified, by writing under their hands, that Mr. George M. Minchin best deserved to succeed, if another Fellowship had been vacant, in accordance with the terms of the will of Samuel M. Madden, Esq.

To Paragraph 11,—We say, that at the meeting in the College Chapel on the morning of Tuesday, the 28th May, when the "Declaratio Socii" was tendered by the Provost to Mr. Purser, he replied that at present he declined to take the Declaration.

To Paragraph 14,—We say, the statement contained in this Paragraph is not correct. The facts in relation to the Madden Premium are as stated in the answer to Paragraph 8; and Mr. Minchin is entitled to the Madden Premium, by virtue of the Certificate of the Examiners, stated above.

Signed on behalf of the Board,

JOHN TOLEKEN, *Registrar.*

TRINITY COLLEGE, DUBLIN,
June 4, 1872.

TO THE RIGHT HONORABLE HUGH M'CALMONT, BARON CAIRNS, AND THE RIGHT HON. AND MOST REVEREND RICHARD CHENEVIX, LORD ARCHBISHOP OF DUBLIN, VISITORS OF THE COLLEGE OF THE HOLY AND UNDIVIDED TRINITY, NEAR DUBLIN.

THE CASE *of* FREDERICK PURSER, *of Lota, Blackrock, in the County of Dublin, Master of Arts, by way of Answer to the Petition of* GEORGE M. MINCHIN *and* ARTHUR W. PANTON:

I. The said Frederic Purser (hereinafter designated as the Respondent) was a Candidate at the Examination for Fellowship in the said Petition mentioned.

II. The Respondent is a member of the Protestant Episcopal Church of the United Brethren, commonly known as the Moravian Church, and, as such, was eligible as a Candidate for a Fellowship in the said College. The said Church is an ancient Protestant Episcopal Church, and is in accord with the Church of Ireland on all the leading doctrines of the Christian faith.

III. The Respondent does not hold any opinions which have been adjudged heretical, nor has he been convicted of heresy.

IV. The said Examination for Fellowship was concluded on Saturday, the 25th day of May, 1872; and on Trinity Monday, the 27th day of May, 1872, the Provost and Senior Fellows met, pursuant to the Statutes of the said College, for the purpose of electing two Fellows to fill the existing vacancies.

V. Prior to the said election on the said 27th day of May, 1872, the Respondent attended before the Provost and Senior Fellows at their request, and in reply to questions then put to him, stated, according to the fact, that he was not a Roman Catholic, and did not hold any heretical opinions, and that he had partaken of the Holy Communion as administered in the Church of Ireland, and had not any objection to attend the services of the said Church.

VI. Afterwards on the said day, the Provost and Senior Fellows proceeded with the said Election, and the Respondent was duly elected to the first of the said vacant Fellowships, and

William S. M'Cay was elected to the other. Subsequently, on the said last-mentioned day, the result of the said Election was duly and formally declared by the Provost on the steps of the Chapel of the said College.

VII. On the 28th day of May, 1872, the Respondent attended in the Chapel of the said College, in obedience to the summons of the Board, and when required by the Provost to make the Declaration prescribed by the Statutes of the said College, he stated that he could not conscientiously do so, and thereupon the Provost refused to admit him to the said Fellowship.

VIII. The Respondent shows that his objections to making the said Declaration were not due to any peculiar doctrines or tenets of the Church to which he belongs, but might, in his opinion, exist equally in all cases where a person elected to a Fellowship in the said College had no intention or desire to devote himself to the study of theology, or to enter Holy Orders.

IX. The Respondent submits that his election by the Provost and Senior Fellows to the said Fellowship is conclusive that he was legally qualified to be a Fellow of the said College; and the Respondent further submits that the making of the said Declaration was not essential to his admission to the full rights of a Junior Fellow of the said College.

X. The Respondent submits that he was duly elected a Fellow of the said College, and that the said George M. Minchin has now no claim or right to be elected or admitted to a Fellowship in the said College.

E. T. Bewley.
H. P. Jellett.

THE HUMBLE PETITION

Of FREDERICK PURSER, *Lota, Blackrock, in the County of Dublin, Master of Arts,*

SHEWETH AS FOLLOWS:—

I. On and prior to the 13th day of May, 1872, two of the Fellowships of the College of the Holy and Undivided Trinity, near Dublin, were vacant, and on the 13th day of May, 1872, and following days, an Examination of the Candidates for the said Fellowships was duly held, pursuant to the Statutes of the said College.

II. Your petitioner was one of the Candidates at the said Examination. Your petitioner is a member of the Protestant Episcopal Church of the United Brethren, commonly known as the Moravian Church, and as such was eligible as a Candidate for a Fellowship in the said College.

III. The said Examination was concluded on Saturday, the 25th day of May, 1872; and on Trinity Monday, the 27th day of May, 1872, the Provost and Senior Fellows met, pursuant to the Statutes of the said College, for the purpose of electing two Fellows to fill the said vacancies.

IV. Prior to the said Election on the 27th day of May, 1872, your petitioner attended before the Provost and Senior Fellows, at their request, and, in reply to questions then put to him, stated, according to the fact, that he was not a Roman Catholic, and did not hold any heretical opinions, and that he had partaken of the Holy Communion, as administered in the Church of Ireland, and had not any objection to attend the services of the said Church.

V. Afterwards on the said day the Provost and Senior Fellows proceeded with the said Election, and your petitioner was duly elected to the first of the said vacant Fellowships, and William S. M'Cay was elected to the other. The result of the said Election was subsequently, on the last-mentioned day, duly

and formally declared by the Provost, on the steps of the Chapel of the said College.

VI. On the said 27th day of May, 1872, shortly after the declaration of the result of the said Election, your petitioner presented a memorial to the Provost and Senior Fellows of the said College, stating that he could not conscientiously take the oath prescribed for the Fellows by the Statutes of the said College, and that it was his intention to apply to Her Majesty the Queen to relieve him by Royal Letter from the necessity of taking the said oath, and praying that he might be admitted to the full rights of a Fellow, and that the time for taking the said oath might be postponed until your petitioner had made such application as aforesaid, or that both the admission of your petitioner to the full rights of a Fellow and the taking of the said oath might be postponed until the said application had been made.

VII. In the said memorial your petitioner set forth certain causes of his reluctance to take the said oath; and your petitioner shows that his conscientious objections to the oath or declaration prescribed by the said Statutes were not due to any peculiar doctrines or tenets of the Church to which he belongs, but might, in his opinion, exist equally in all cases where a person elected to a Fellowship in the said College had no intention or desire to devote himself to the study of Theology, or to enter Holy Orders.

VIII. On the 28th day of May, 1872, your petitioner attended in the Chapel of the said College, for the purpose of being admitted to the said Fellowship, and when the Provost required him to make the said Declaration, the petitioner stated that he could not conscientiously do so, and thereupon the Provost refused to admit him to the said Fellowship.

IX. Your petitioner submits that the making of the said Declaration was not essential to his admission to the full rights of a Junior Fellow of the said College; and he submits that he is now entitled to be admitted to the full rights of the Fellowship to which he was so elected as aforesaid.

MAY IT THEREFORE PLEASE YOUR LORDSHIPS to hold a Visitation in the said College, to inquire into the matters aforesaid, and to declare that your petitioner was duly elected a Fellow of the said College, and to direct that he may now be duly admitted to the

full rights of the said Fellowship; or that your Lordships may make or give such further or other declaration or direction as to your Lordships may seem meet.

And your petitioner will ever pray,

E. T. BEWLEY.
H. P. JELLETT.

BENJAMIN WHITNEY, *Solicitor for the Petitioner*, FREDERICK PURSER, *No.* 29, *Upper Fitzwilliam-street, Dublin.*

PROCEEDINGS.

TUESDAY, 11TH OF JUNE, 1872.

THE Court sat at 11 o'clock, A. M.

THE VICE-CHANCELLOR.—I wish to state in opening this inquiry that nothing is to be done on this occasion but to dispose of the matter of this Petition; our inquiry will be confined exclusively to it. The course which will be most convenient to take is this: we will hear two Counsel for the Petitioners, two for Mr. Purser, and two for the College. Counsel for the Petitioners will be heard first. Mr. Butt is obliged to attend in the House of Commons, and as I have made it a rule to accommodate Counsel as much as I can, consistently with the public business, he can be heard in reply on the whole case.

The Solicitor-General, for Mr. Minchin and Mr. Panton.

May it please your Grace, and you, Sir Joseph Napier, I appear with Mr. Butt and Mr. Murray in support of the Petition which has been presented by Mr. George M. Minchin, and Mr. Arthur Panton, and which asks that a Visitation may be held, to obtain a direction from you upon the question in dispute as to a Junior Fellowship of this College. The case made by the Petition is two-fold. It is first, that Mr. Purser, who has been elected, was ineligible, and, therefore, he should not have been elected; 2nd, that if even he were eligible, originally, by reason of his refusing to make the Declaration required by the Statutes, it should be declared that the Fellowship had not been filled up, but that the Petitioner Mr. Minchin was entitled to an immediate election to the office. These are the two questions in this case: the first will turn upon the eligibility of Mr. Purser under the Statutes; the second is, supposing he was eligible, what will be the result in law of his refusal to make the Declaration? The Petition states that an Examination was duly held, commencing on the 13th of May, 1872, for the purpose of select-

ing out of the eligible candidates for the Fellowships the two who, on the general result of the examination, should obtain the highest marks; that the Petitioners presented themselves as candidates at the examination; and that previous to the election a protest was presented by Mr. Panton, Mr. Minchin, and Mr. M'Cay, to the Provost and Senior Fellows of the College, giving them notice that one of the candidates for the Fellowships, Mr. Frederick Purser, was ineligible as a candidate, inasmuch as he was a member of the Moravian Church; it also states that he presented himself in the year 1859 as a candidate for a Scholarship, and though his marks would have entitled him to a Scholarship, if he were eligible, he did not obtain that, but merely obtained a Non-foundation Scholarship. The protest of the 25th of May is in the following words:—"We, the undersigned, candidates for the Fellowships now vacant in this College, hereby give you notice that one of the candidates for the said Fellowships, viz., Frederick Purser, is ineligible as a candidate, inasmuch as he is a member of the Moravian Church. We beg further to apprise you, that in case you elect him to one of the said Fellowships, such election will be null and void, as contrary to the Statutes of the said College, and to the laws of the Realm." It appears to be admitted, that upon the 25th of May, 1872, and also previously to the commencement of the examination, the Board of Trinity College were aware of the Church to which Mr. Purser belonged. At the conclusion of the examination, the candidates were declared to have answered in the following order of merit:—Frederick Purser, first; William S. M'Cay, second; George M. Minchin, third; and Arthur W. Panton, fourth; therefore if it be declared that Mr. Purser is disqualified, Mr. M'Cay should be elected to the first place, Mr. Minchin to the second, and Mr. Panton should get the Madden Premium. The Petition states that on Monday, the 27th of May, 1872, the Provost and Senior Fellows proceeded to elect two of the candidates to the Fellowships. The Rev. J. A. Malet, D. D., one of the Senior Fellows, refused to vote for Frederick Purser, on the grounds that he was ineligible on account of his religion, but voted for George M. Minchin. The Provost and the other Senior Fellows voted for Frederick Purser, and the Provost declared that Frederick Purser had been elected to one of the vacant Fellowships, and that William S. M'Cay had been elected to the other. On the following morning, Tuesday, 28th of May, 1872, the Provost and Senior Fellows proceeded to the Chapel of the College for the purpose of administering the declaration prescribed by the Statutes of the College to Frederick Purser and William S. M'Cay, and of admitting them as Fellows

of the College; so that anything material that happened in the case took place either upon the Monday or the following Tuesday, that being the day of election to the office of Junior Fellow, and the Board had full notice of the Church to which Mr. Purser belonged, before the commencement of the examination. It does not appear that there is any controversy in point of fact as to the case. Mr. Purser has not put forward the case that, previously to the passing of the Church Act, he was a member of the Church of Ireland, or that he now is a member of it, but he asks the Visitors to go into the consideration of the doctrines of that Church, and of the Moravian Church, and, by instituting a comparison, to arrive at a conclusion as to what are the elements in which there is a difference, and whether or not that difference is material. In the view we take, the differences are not of very great consequence; the question is much broader, namely, whether before the passing of the Irish Church Act a Protestant Dissenter—and I am here admitting the most I could for Mr. Purser's case—was eligible as a candidate; secondly, that if he was not eligible before, such a change was made by that Statute, that a person not eligible previously became eligible afterwards. If it is necessary to go into a consideration of the doctrines of the Moravian Church, we shall be prepared to prove that they are not the same with those of the Church of Ireland, but are essentially different. One thing, at all events, is admitted, that the two Churches are not the same. I shall now direct my observations to the first division of my argument, that Mr. Purser, having regard to the true interpretation of the Statutes of the College, was from the first ineligible. I shall consider the case as if I were arguing it before the passing of the Church Act: and what you, as Visitors, are called upon to decide is, in truth, what are the trusts upon which the College was originally founded. Our proposition is broad: we say, that under the Charters of Elizabeth and Charles, the foundation of this College was that of a religious doctrinal establishment. We say, that the education pointed at was an education in connexion with the religion which then alone legally existed in these realms, and for the promulgation of which, as connected with the State, this College was founded; and if I can show, as I trust I can, that this religious education pervades every part of these Statutes, and that a religious trust is the foundation of this College, it will be nothing more than an application of the simple doctrine of trusts, and no matter what has subsequently taken place, unless there has been a change in the foundation of the College, by Statute, those trusts must be carried out.

VICE-CHANCELLOR.—You do not exclude any Statute down to the present time?

Solicitor-General.—Certainly not. The argument of counsel for Mr. Purser will be, "show me any Statute excluding him;" but this is not the proper interpretation of the intention of the Founder. If I can show, by a reference to the Statutes of Elizabeth and Charles, the essential religious character of the College to be as I have stated it to be, it will lie upon my learned friends at the other side to produce some Statute expressly admitting persons professing the religion of Mr. Purser; and it is for that purpose I refer to what constitutes the foundation of this College. If I establish a trust for the benefit of the religion of the Church of Ireland, these trusts may be altered by Statute, but so far as they have not been altered, they must bind the College; and if I show that Mr. Purser is ineligible under the said Charters, his counsel must show that by some subsequent Statute, he is eligible. I shall commence with the Charter of Elizabeth: it will be necessary to refer to one or two words to show the strict manner in which the religion of the time is connected with the trusts. At page 2 of Mr. Mac Donnell's edition of the Statutes of the College (the edition hereafter referred to) in the Charter of Elizabeth, 1592, occur the words: "Ut eo melius ad bonas artes percipiendas colendam que virtutem et religionem adjuventur." It is clear from this that the principal object of the foundation of the College was the better to assist the students in studying the liberal arts, and cultivating virtue and religion. That religion here meant the Established religion, is evident when it is remembered that the Book of Common Prayer (King Edward the Sixth's), with alterations and additions appointed by the Statute, 2nd Eliz., ch. 1, and the Act of Uniformity, 2nd Eliz., ch. 2, was directed to be in full force, and penalties were imposed upon every one who would not attend the service of the Church of Ireland; and by section 3 it was enacted that "if any one shall procure or maintain any person, vicar, or other member, in any cathedral or parish church, or in chapel, or in any other place, to say any common and open prayer, or to administer any sacrament otherwise, or in any other manner and form than is mentioned in said Book, shall, on a third conviction, forfeit all his goods, and suffer an imprisonment for life."

It is not necessary to refer particularly to the provisions of these two Statutes, by one of which the King or Queen is declared to be the spiritual head of the Church; by the other, enactments are made prohibiting other religions, and declaring that one form of religion alone should legally exist in England

and Ireland. What religion is pointed at in this Charter? This question was asked when Mr. Heron applied to the then Visitors of the College to be admitted a Scholar; and if we were to ask now what was the meaning of the words used, what answer could be given as to the religion that was pointed at, but the one? I feel it necessary to dwell upon this topic, as it may be said I am labouring a question that is perfectly clear; but I have the strongest belief that if, in the inception of the argument, I can fasten this trust upon this foundation, nothing can alter it but an affirmative Statute. I pass on to that part of the Charter of Elizabeth (34), which deals with the filling up of a vacancy when it takes place, and the election of Scholars and Fellows, and I ask what interpretation is to be given to these words: "vel majori parti eorundem, aliam idoneam personam vel alias idoneas personas, in locum vel locos;" what interpretation must be given to this direction—that when a vacancy occurs among the Fellowships, some other fit and proper person or persons shall be appointed? Surely, when I establish that it is a religious foundation, and that one of the objects is that there shall be religious instruction imparted, and that the Fellows are the persons from whom the Provost is to be elected, surely, according to the words of the enactment, the religious character of the person must be shown, to enable him to fill the office of Fellow. What is the meaning of the words "*idoneam personam*"? There is in the Charter of Elizabeth no provision against Roman Catholics being Fellows. There is in the Charter of Charles a similar provision to that which I have read; but supposing, upon that Statute, we had to argue whether a Roman Catholic presenting himself, and without any prohibition preventing him from so doing, he could not be regarded as a fit person, as the "*idoneam personam*" of the Statute. There are words in relation to the appointment of Fellows which may be material in the second part of our contention (page 4), "*eligere, nominare et constituere.*" Each of these words must be taken as meaning something separate. In one event that may occur, the Provost and Fellows are to elect, nominate, and appoint or constitute, a Fellow, and our contention upon the point is, that when so elected, he is not a Fellow, but a Fellow elect, until he has been admitted; the election is nothing more than declaring a person, as to whom their said election is final after admission. He must be constituted a Fellow of the College before the vacancy has been filled. At page 7 the words occur, in connexion with the removal of Fellows to make room for others: "Ut alii in eorum locum suffecti, pro hujus Regni et Ecclesiæ beneficio, emolumentum habeant." That is a provision made for the benefit of

the Church as well as the State; and no person can read this and the preceding clause, in which it is directed that no person shall hold the office of Fellow for a longer period than seven years from the period of obtaining his Master's degree, otherwise than that its meaning is, that highly educated men who filled the office should cease to do so, and should go forth into the world for the good of the Church and the State, for the purpose of promulgating the existing religion in this country, and electing others who should in turn receive the emoluments of the office, and in due time go forth likewise and promote the State religion. These are the only passages from the Charter of Elizabeth to which I think it necessary to refer; and coupling these with the subsequent Acts, it surpasses my comprehension to understand how it can be argued, if these Statutes stood alone, and judging it as a charitable trust, that it was not a foundation for promulgating the doctrines of the Established Church in Ireland. The Charter of Charles I. (13th A.D. 1637), recites the Charter of Elizabeth; and at page 14 these words will be found in that Charter: "Nos, dictam provisionem, utpote inimicam non solum studiosis, et Collegio, sed revera Regno etiam, et Ecclesiæ," inasmuch as the provision was truly hostile not only to the College, but to the State and the Church. To what Church? What is the Church to which reference has been made in that Statute? At that time Acts were being passed by the Irish Parliament to make amendments in the Book of Common Prayer, which were duly carried out by the 17th & 18th of Chas. I., ch. 6, the second Act of Uniformity in Ireland; therefore, so far as Charters are concerned, it is impossible that one word could be urged in favour of the proposition that anything was intended but that which I have stated. If I have shown that the College was a religious foundation, the above provision can only be considered as extending the object of charitable trusts; that is, to make certain changes in the foundation, which were not injurious, but advantageous, to Church and State, which Church plainly means that by law established.

I pass from this Charter to the Letters Patent of 13 Chas. I. (1637). The second chapter treats of the office of Provost, and at page 31 are the words: "Statuimus igitur, ut Præpositus sit moribus probus, vitâ integrâ, et famâ inviolatâ annos natus ad minimum triginta, et in sacris ordinibus constitutus. Sic etiam professor in Sacrâ Theologiâ, vel ad minimum Baccalaureus in eâdem facultate." What are the orders pointed at in this passage? What is the theology of which the Provost is to be a Professor, or, at least, a Bachelor? What is to be the religion of the College, as shown by those Letters Patent? Is it to be the religion of the founder which must be professed, not only professed by the

Provost, but which the greatest care has been taken shall be taught by him, he being in Orders and a Professor of Theology in that Church? Again, at page 32, we find what Church preferments he may hold; he is at liberty to hold one benefice with cure of souls, or any ecclesiastical appointment which is under that of a Bishopric: "Dignitatem verò eeclesiasticam (quæcunque sit infra Episcopalem"). What Bishopric is here pointed at? Is it not clear that the person who was to be chosen Provost should be in Holy Orders of the Church of Ireland, and that his duty was to teach the theology of that Church?

I now come to the oath of the Provost (ch. 3, p. 33): "Juro me veram Christi religionem ex animo complexurum, Scripturæ auctoritatem, hominum judiciis præpositurum, regulam vitæ, et summam fidei inde petiturum, auctoritatem regiam in omnibus summam, et externorum episcoporum jurisdictioni minime subjectam estimaturum, contrarias vero verbo Dei opiniones omni conatu aversaturum." It is clear that by this oath the religious views of the Provost are fixed as being those of the Church of Ireland, recognising the King as the head of the Church and State, and not all subject to the jurisdiction of foreign bishops, and those of one who by every endeavour would repel all opinions contrary to the Word of God.

I pass on to the election of Junior Fellows (ch. 7, p. 39): "Volumus, et statuimus, ut in Socios ii solum co-optentur, de quorum religione doctrinâ et moribus tum Præpositus tum socii septem seniores, spem bonam animis conceperint quique gradum Baccalaureatus in artibus jam susceperint." What is the meaning of the words "religione doctrina"? "Religione" clearly points to religion as a thing that is distinct from mere secular learning, which is expressed in the next word, "*doctrina*." They were to be satisfied before the election takes place as to the religion of the persons who were to be elected Fellows; and I submit it cannot be contended that "Religion" means anything but the religion professed by the Church of Ireland. I now come to page 40,—to the duty of the electors:—"Omnes electores memores juramenti Collegio præstiti, provideant et statuant, se neminem in socium electuros qui sit infamia notatus de hæresi convictus, aut moribus et vitæ consuetudine dissolutus." The argument which I have no doubt will be raised at the other side is, that these causes alone constitute the reasons why a person should not be elected to the office of Fellow. I contend that the words deal with a person who is within the Church of Ireland, and they have not any application to persons outside the Church, who never were objects of the religious trust. It never, for example, had any appli-

cation to persons who were of the Jewish persuasion. Every portion of that sentence clearly deals with a person who is within the Church ; it has reference to one within the Church, who is not to be elected if he is of bad character or of dissolute life.

VICE-CHANCELLOR.—Are you prepared to state what, in your opinion, constitutes membership of the Church of Ireland?

Solicitor-General.—Yes; my contention is, that prior to the passing of the Church Act, Mr. Purser should have been actually a member of the Church of Ireland. I understand that the two Churches, the Church of Ireland and the Moravian Church, are not in communion ; that a Bishop of the Moravian Church cannot be recognised as a Bishop of the Church of Ireland ; and that none are eligible to Fellowship except those who, before the passing of the Church Act, belonged to the Church of Ireland. The effect of the Church Act was, not to destroy but to disestablish the Church; and as to doctrines, the Church of Ireland remains the same, subject to what alterations may be afterwards made—in other words, the Church ceased to be a State Church, but the religious trusts remain the same. The celebrated case of *Lady Hewley's Trusts*, the principle established in which was confirmed by the House of Lords (9 Clark & Finelly, p. 355), decided that the religious belief of the founder of the charity, at the time of the bequest, should be taken into consideration, and that belief, unless it is contrary to the words of the instrument, shall be held conclusive as to the religious character of the trust. I may be going at too great length through the various clauses of the Charter, but the matter is so vital that I am constrained to do so, unless it shall be admitted by my learned friends at the other side, that the foundation of the College was essentially in its commencement a foundaton for the benefit of the Church of Ireland. In page 41, the chapter proceeds to declare what shall constitute the *plenum jus*. On the day after the day of election the Junior Fellow is admitted to his full rights as such, that is, so soon as the declaration has been made; the complete *status* of the Fellow has been then attained. The final requirement has not yet been performed ; it is admitted that Mr. Purser refused to make this declaration. There is in page 41 a provision that may be important when we come to deal with the question whether making the declaration is a condition precedent to being declared a Fellow, or is a subsequent matter. It will be found at the end of page 41: "Quoniam vero præsumendum est, eos qui secundum veterem Chartam admissi pæne ad terminum ibi præstitutum pervenêre, alieno jam animo esse à Collegio, et alibi, ni sibi defuerint, sedem parâssê; nolumus, ut st qui sint, qui septennium à suscepto Magisterio in hoc Collegio prox-

imis comitiis completuri sunt, ii hujus statuti beneficio fruantur aut ultra terminum prius definitum jas societatis retineat. Reliquos omnes tam socios quâm Scholares post præstitum hisce statutis nostris juramentum et speciali gratiâ, omnibus in iisdem comprehensis privilegiis gaudere volumus. Quod si quis ex his sive socius, sive Scholaris fuerit, juramentum ordini suo prescriptum præstare recusaverit, illico Collegio amoveatur." The Statutes and Charters had provided in a previous part that the then Fellows, under the Elizabethan Charter, and who held their Fellowships not for life but for seven years, should hold their Fellowships for life, except those who would have completed the period of seven years at the next Commencements; all the rest should enjoy, by the Caroline Charter, their Fellowships for life; but if any of these, i. e. the then existing Fellows, should refuse to take the oath prescribed by the last mentioned Charter for his order, he should be forthwith removed from the College. This proviso is misrecited in the Royal Letter, 18 Vict., s. 5 (vol. 2, p. 67) as if it were applicable to all the Fellows. We argue that the words apply to Fellows and Scholars then existing; and with respect to these, it is clear that it would operate as a condition subsequent, to prevent them from having the benefit of the Statute.

VICE-CHANCELLOR.—It is put as a test whether they would continue in the College?

Solicitor-General.—Yes, but we deny that it has any application to Fellows newly appointed. We say that the oath must be taken before they can be admitted into the *status* of a Fellow. At the end of page 44 of the 8th chapter of the Letters Patent of Charles, a portion of the Fellow's oath will be found—"Studiorum finis erit mihi theologiæ professio, ut ecclesiæ Dei prodesse possim, nisi aliter Deus mentem meam deinceps inclinaverit. aut nisi in locum juristæ, vel medici in Collegio, nominatus, et electus fuero." Surely this is an oath to be taken by a person before he can fill the *status* of the office: in it he declares that the object of his studies is Theology; towards that profession his mind is inclined, unless the Almighty afterwards may think proper to change his mind; but the words "*aliter deinceps*" show it was the intention of the framer of the oath, the moment the oath was taken, that there should not be a mere vague idea in reference to the matter, but a resolution that unless appointed either *Jurist* or *Medicus*, he could embrace the profession of Theology, and take Orders in the Church, there being a *bonâ fide* intention on his part at the time to do so. What is the Theology he is to study? What is the Church, the interests and doctrines of which he is to enter and promote? I take it that coupling the

oath with the Charters of Elizabeth and Charles, it is not open to controversy, that from the time of the 13th of Charles the First, the oath of a Fellow elect contained this solemn statement, that he should have in his mind a present intention to make the Theology of the Church of Ireland *the* main object of his studies, and unless he were afterwards elected to a lay Fellowship, to take Holy Orders in that Church.

VICE-CHANCELLOR.—Suppose he had not made up his mind?

Solicitor-General.—He could not conscientiously take that oath. It could not be said in such a case that it was a subsequent change of intention.

VICE-CHANCELLOR.—Suppose that an intention not to embrace theology continued?

Solicitor-General.—That would be contrary to his oath. It is sufficient for me to argue that he must have been in a position at the time he took the oath to pursue theological studies, and be a clergyman.

The Moravians were not in legal existence in these realms at the time of Elizabeth and Charles the First, so that we are dealing with a distinct Church—that is, the Church by law established. The 9th chapter of the Letters Patent of Charles fixes what is to be the religious character of the foundation of the College, and at page 44 it appears that every member shall from time to time attend service in the Chapel, be present upon Sunday, and go to the Cathedral Church of St. Patrick during Lent, that the Public Liturgy prescribed by the Church of England is to be the form of worship: "Formula sit ea quæ in publicâ ecclesiæ Anglicanæ liturgiâ præscribitur." If this be so, every one who enters the College is placed under an obligation of regulating the character of his religious tenets by the standard of the Church of Ireland, and of being a member of that Church; because that which has been prescribed cannot be done by any but by a member; and at that time no other Church but that legally existed in Ireland, and the Charter of Charles sufficiently establishes that the College in its foundation was essentially a doctrinal foundation connected with the Church of England. Provision is afterwards made by the appointment of Deans, that the students shall obey and perform the enactments in reference to the exercise of their religion: at page 50 there is a provision that a Catechist is to be chosen and Heresy shall be checked, and then there is the clause, which is not in the Statute of Elizabeth, that Roman Catholics are ineligible to a Fellowship. The clause will be relied upon as something to show that there would have been an express prohibition against Dissenters if it were intended to exclude them. It is as clear, as a matter of

construction, that even if these words had not been inserted in the Statute of Charles, it would be impossible to contend that a Roman Catholic was eligible. The Charter of Elizabeth founds the College for religious purposes. Will my learned friends say that if a Roman Catholic presented himself, between the Charter of Elizabeth, and the repeal of the Act of 3rd and 4th Philip and Mary, he would be eligible? If my learned friends are right, why not elect a Jew to the office of Fellow? After the Charter of Charles, the Jews were in the same position as that in which Protestant Dissenters were placed. The Jews have not been convicted of Heresy, but if we go beyond the mere words, and seek the intention of the Founder, we find the argument that excludes the Jew.

VICE-CHANCELLOR.—The Jew would not acknowledge the authority of New Testament Scripture.

Solicitor-General.—The two things are directed in the same chapter. Any argument which my learned friends at the other side can use to show there must be the authority of Holy Scriptures, will also show the necessity of acknowledging as the Liturgy of their Church the Liturgy of the English Church. In chapter 13, page 59, the Deans are directed to enforce the due discharge of duty imposed on all the members of the College, of attendance at Chapel, and partaking of the Sacrament: there are also enactments for the imposition of penalties imposed on all Students and Fellows for the non-performance thereof, and other matters of that description. I submit, therefore, taking the Charter of Elizabeth, and the Charter and Statute of Charles, the effect of the whole is to establish a foundation of a religious educational charity, and I have, I think, also established that it was the only religion then existing in the contemplation of the Founders—the religion of the State—the Church of Ireland. If I am correct in this, Mr. Purser cannot have any right to the Fellowship, unless it has been given to him by express subsequent enactment. The Statute relating to Dissenters is in the Letter of the 18th Victoria, which will be found in volume II., page 105. It recites at page 104 the Statute of 34 George the Third, which entitled Roman Catholics to be admitted to the College. It is unnecessary to argue that upon the true construction of the Statute the rights of Roman Catholics were limited by that Statute, to being admitted as undergraduates in the said College, and of obtaining degrees in the University; and by the Letter of Victoria, Protestant Dissenters are to have and enjoy the same privileges and advantages as Roman Catholics, and no more. If I am right in my contention that the Protestant Dissenters had no *locus standi* under the origi-

nal foundation, their rights must be under the Letter of Victoria, or under some Statutes subsequent to the Charter of Charles, and those rights must be co-equal to and co-extensive with the rights that have been previously granted to Roman Catholics. It will be observed that the words "other Dissenters" are used generally. It could not have been that the framers considered the Dissenters could be divided into two classes, that one should be regarded as nearly approaching to the Church of Ireland; but they drew the line of demarcation previously drawn against Roman Catholics. At first no Roman Catholic could be admitted to the College; that disability has been removed by the Statute of George the Third, and now he may proceed to enter College and obtain degrees. Observe the words are any other Dissenter from the Church of England or Ireland, other than a Roman Catholic—there is no word to which "other" can be applied except as included in the class of Dissenters—every one whose doctrines are not similar to those of the members of the Church of England. It appears from the letter itself as a matter of interpretation, that the previous Charter excluded all Dissenters, and the test was not "To what extent do your doctrines differ from those of the Church of England and Ireland? but, Do you belong to the United Church of England and Ireland? if so, you are within the purview of the Statute; but if by dissent you become a member of another Church, you are outside the provisions of the Statute, and we are obliged to bring you within the provisions by another Statute." In the same letter, but in an earlier passage, page 67, the number of Lay Fellows is increased from three to five, and in section 5 (same page), there is a remarkable reference to the Letters Patent of Charles the First, and the clause sets forth that "whereas it was enacted (in those Letters Patent), that any Fellow or Scholar who, after his election, may refuse to take the oath prescribed by the Statutes, shall be immediately removed from the College; and whereas it is sufficient to remove such Fellow or Scholar from his Fellowship or Scholarship, if the grounds upon which he shall refuse the prescribed oath do not appear to call for his removal from the College, our will and pleasure therefore is, that the words 'illico Collegio amoveatur'" be omitted, and instead thereof there be inserted the words "jus Societatis, seu Discipulatûs ipso facto amittat, et, si ita Præposito et Sociis Senioribus visum fuerit, illico Collegiò amoveatur." You will, I am sure, be of opinion that the proviso here recited applied only to the septennial Fellowships of Elizabeth, and not to all subsequent Fellows, and this is a plain mistake in the recital.

VICE-CHANCELLOR.—It is plainly a mistake.

Solicitor-General.—But I trust you will be of opinion that the mere reading of the Charter of Charles the First will show that, from the fact of Mr. Purser refusing to take the declaration, we are entitled to have a new election.

VICE-CHANCELLOR.—You do not rely upon the mistake, but you say that until he makes the declaration his title is not complete.

Solicitor-General.—We also rely upon the principle, that where two acts are to be done, one of which is possibly to be done on one day, the other upon another day, if the intention is that one of the acts is to follow the other, one act is as nothing until the other act has been done, and the proper course then is to proceed to a new election. I submit that the Court is bound to carry out the original trusts, which are for doctrinal purposes, and that the doctrines are those of the Church of England and Ireland, and any subsequent change which may take place, by rendering doctrines lawful which were unlawful, or changing doctrines, must be disregarded. No Church but that of the Church of Ireland could be recognised as existing by the framers of the Statutes; no Church could be regarded as being in existence but the Church of Ireland—it was the one Church—changes have been introduced—dissent has sprung up, and since the passing of the Toleration Act dissent has been rendered lawful; but the question is, whether any subsequent Act, making such doctrine lawful and Dissenters admissible, could change the original foundation of the University. This is entirely a matter of strict law. It has been frequently under the consideration of the Court of Chancery in England, and of the House of Lords. The law is well settled. I now proceed to show that such matters as these partake of the character of Charitable Trusts. I shall refer to a few cases only. The first case to which I shall call your attention is that of *The Attorney-General* v. *The Dean of Christ Church* (Jacob's Reports, 474). You will find the portion to which I refer at page 487. The principle contended for in that case has been established more clearly in the case of *Lady Hewley's Charity* (7 Simon, 312), and I call your attention to page 315 of the Report. Lady Hewley was a Presbyterian and believer in the Trinity, and the fund came into the hands of persons who professed Unitarian doctrines. In the case of *The Attorney-General* v. *Shore* (9 Cl. & Fin. 355), the same principle was established, and affirmed by the House of Lords. In *Lady Hewley's Case* the object of the deed of foundation was declared to be "to assist poor and godly preachers of Christ's Holy Gospel, and to assist poor Widows of such Preachers, and poor and godly persons in distress." The Court was required

to gather the trusts from the words, connected with the strange fact, that the donor was a Presbyterian, and was a believer in the Trinity, the object of the Bill being to divest the fund from the Presbyterian body and confer it on the Unitarians. At page 312, the judgment of Lord Lyndhurst is to be found. His Lordship said, that the particular religious opinions of Lady Hewley were to be considered, she being a Presbyterian; secondly, the doctrines and opinions of the Presbyterian body at the time. The next question is, what were the doctrines and opinions of the donor? and at page 313 it will be seen that Lord Lyndhurst had arrived at the conclusion that Lady Hewley was a Presbyterian and a believer in the doctrine of original sin. Having established that the religion of the donor was Presbyterian, he considered the question, "what was meant by the description, Godly Preachers of Christ's holy Gospel?" and in this likewise he arrived at the clear conclusion that what was intended was, "godly Preachers of Christ's holy Gospel, according to the form of faith which she believed, and the rites and doctrines of the Trinitarian branch of the Presbyterian Church." Every part of this judgment of Lord Lyndhurst applies with the greatest force to the present case. It is not that we are obliged to go into parol evidence as to the religion of Queen Elizabeth or Charles the First: in every line of the Statute there is the indication of an intention to promulgate the doctrines of the only Church that had existence at the time: therefore, it is settled law, that if in its very essence this College was a foundation of the Church of England, as established in Ireland by Elizabeth and Charles, no preacher or teacher could be admitted into it who did not hold the principles of that Church. It would be a different question to what extent students might be admitted. There is a large class of cases, such as the Free Grammar Schools of Edward VI., all of which have been decided upon these grounds, but in every one of these cases it was held, that any one who sought to be admitted to the Foundation of the Institution should belong to the faith of the Founder, and profess the religion which the Charter designed to promote. If I am right in my view, and the case has been well decided, no one could legally claim the benefits of the trusts contained in the bequest; and similarly under the provisions of the Statutes of Elizabeth and Charles, no one can now claim the benefit of these Statutes who could not have claimed it immediately after the passing of the Acts, and which excluded everybody except those who held the doctrines of the Church of Ireland. The next case I will cite is that of *The Attorney-General* v. *Drummond* (1st Dru. & War. 352.) In the year 1710, a fund was

subscribed by the members of certain Trinitarian Protestant Dissenting congregations, but afterwards the funds came into the hands of members belonging to the Unitarian branch of the Church. Lord St. Leonards declared that there was misapplication of the fund; and although the objects of the trust were exceedingly general, he confined it to the Presbyterian branch of the Church. The next case to which I shall call attention is that of *The Attorney-General* v. *Pearson*, 7 Sim., 290–306. In the year 1701, a Meeting-house was founded by certain Protestant Dissenters for the worship and service of God, and it was held that no doctrine should be taught in it which was opposed to the religion of the Founder, and that in ascertaining these opinions, the state of the law when the Meeting-house was founded ought to be regarded.

VICE-CHANCELLOR.—I suppose it will not be controverted that the expressed intention of the founder must be regarded; in every such document the question turns upon the intention conveyed by it according to its legal interpretation.

Solicitor-General.—But we are at liberty to consider, first, the religion of the Founder; secondly, the state of the law existing at the time of the foundation. The case of the *Attorney-General* v. *Drummond* was one in which the intention was not pressed; the Court was obliged to resort to parol evidence, and to gather the intention from the deed, coupling this with the state of the law at the time.

VICE-CHANCELLOR.—I take it, that the Court resorted to external aid to enable it to decide what was the sense of the words used; the Court might resort to books or anything contemporaneous that would have the effect of explaining the language, but all this must be brought together to enable the Court to understand the meaning of the instrument, and give to it a legal construction.

Solicitor-General.—I fully admit that, and I say, as a matter of construction upon the Statutes of Elizabeth and Charles, that the benefit derivable from them was confined to those who belonged to the Church by law established. The change in the law which made lawful that which had previously been unlawful, might make broader the original foundation, but its essential character could not be changed except by express legislation, and the only legislation is that which admits Dissenters to receive Degrees, but not to attain Fellowships. There likewise is a decree by the present Lord Chancellor of England in *The Chelmsford Grammar School* (1 K. & J. 543). If I have demonstrated that upon the face of the Charter that the education should be religious as well as secular, this will make my case

stronger than that which now I quote. At page 568, the Lord Chancellor says:—"They must have religious instruction imparted to them, and, in the case of a Church of England foundation, that instruction must be imparted to them by a member of the Church of England." The present case is *à fortiori* much stronger. In the case I have quoted, the Chancellor gathered from the words of the Statute, though they would be satisfied by taking them to mean secular education, the logical conclusion that the religious education must be that of the Church of England; he carries the religion down from the reign of Edward the Sixth to the present time, and shows that, if he were otherwise to decide, he would be doing injustice to the Dissenters themselves. My first argument is, that Mr. Purser never was eligible in a *bonâ fide* manner—that he had never been legally eligible. It is admitted that he had, on a previous occasion, obtained a Non-foundation Scholarship, but was not considered to be eligible to a Foundation Scholarship. It is admitted that he belonged to the Moravian religion; it is the province of the Visitors to see whether the construction put upon the Statutes is the correct one, and if it is so, it follows, as a corollary to our argument, that Mr. Purser never should have been a candidate. I shall now direct your attention to the operation of the Church Act. If I were to have argued the case here in the year 1688, Protestant Dissenters would have been excluded in the same way as in England. Let us now consider what alteration has been made by the Irish Church Act. We are dealing, be it remembered, with Charitable Trusts. In section 2 the words are, "The said Church shall cease to be established by law." The Church, however, remains in full force, professing its former faith, and binding each member by its doctrines.

VICE-CHANCELLOR.—Suppose he became a member of another Church.

Solicitor-General.—My contention goes this length: if, by reason of anything that may take place, the doctrines of the Irish Church should be such that, according to the principles laid down in the Statutes of Elizabeth and Charles, that Church would become heretical; every Fellow who joined that Church would cease to be a member of the Irish Church, for what has been done as to disestablishing the Church does not interfere with its doctrine, but declares that it shall cease to be attached to the State as an Establishment. I thus bring the case within the principle of Lady Hewley's case, for there the doctrines held by the donor were allowed to prevail. If my argument be good for anything, the result will be this—ascertain the religious

opinions of the Founders, as evidenced by the Charters of Elizabeth and Charles, and then the Court is bound to carry out the charitable trusts so ascertained. If anything should happen hereafter—if the Church of Ireland should embrace heretical opinions, and those doctrines should be declared to be illegal, a different question would arise; but until there is an Act of Parliament which declares the doctrines held by Elizabeth and Charles, and indicated by their Charters, to be illegal, I submit that the trusts impressed upon the instruments founding this charity, and the intention to promulgate the particular doctrines entertained by the founders, and expressed therein, must be carried out.

VICE-CHANCELLOR.—Suppose a student of the Wesleyan connexion came to this College, and offered no objection to conform to its usages and discipline, would you say that the Board were bound to ascertain what his religion was, and, finding it, declare him to be disqualified as a candidate?

Solicitor-General.—Yes, there is but one test—Is he a member of the Irish Church? If you are able to arrive at the conclusion that he is a member, he comes within the principle applicable to charitable trusts. There is one line of demarcation excluding him—he either is within, or without the Church for all purposes; and my proposition is—is Mr. Purser a member of the Church of Ireland? This circumstance is necessary to bring him within the operation of the charitable or religious trusts. I submit that he never was a member of the Church. What then is to be done? According to the doctrines of a Court of Equity, that is deemed to have been done which ought to have been done. No doubt the election should take place upon the Monday—the day after Trinity Sunday. It cannot lie in the mouths of those who have allowed the time to lapse to say that they cannot elect on another day. In the *Queen's College, Cambridge, case* (Jacob, 46), the election was held to be void. Upon Trinity Monday the Board were aware of the religion professed by Mr. Purser, they were also aware of his refusal to make the declaration, and they had the entire of the Tuesday to complete the Act which was necessary to constitute as a Fellow the person who had been elected. If I am right in my argument, Mr. Purser could not be declared a Fellow. Mr. Minchin should have been constituted a Fellow on the Tuesday.

VICE-CHANCELLOR.—The Board could not have constituted any one a Fellow whom they had not elected on the Monday.

Solicitor-General.—But supposing that no one was elected, supposing that his election was void, upon the Tuesday there was no election, it was the duty of the electors to fill the office

of Fellow: the *status* given to the candidate on that day is distinguished by the founders of the College from election; upon the Tuesday they had full power to elect, although they had neglected upon the Monday to do so.

VICE-CHANCELLOR.—They could only have admitted on the Tuesday the Fellow elected on the Monday, and then only upon his making the declaration.

Solicitor-General.—Assuming that to be so, there is nothing to show that time is the essence of the matter.

VICE-CHANCELLOR.—If you are right, there would be a void and abortive election.

Solicitor-General.—We would be satisfied that the matter should go back to the Fellows, with a declaration, that in the opinion of the Visitors Mr. Purser was not eligible.

VICE-CHANCELLOR.—If there had been an abortive election, the duty of electing had not been completed, and it is contended that the Visitors have full power to correct it.

Solicitor-General.—That would be the result. Here there are no negative words. It clearly was intended that the election should take place upon the Trinity Monday, that is by affirmative words. Circumstances might arise that would make it inconvenient to hold the election upon that day, but I rely upon the fact, where a right is defined, and a particular thing is to be done upon a particular day, time is not the essence of the matter, unless you can gather from all the Statutes that it is.

VICE-CHANCELLOR.—Have you any case where, if a thing is required by a Charter to be done upon a particular day, it could be done upon another day?

Solicitor-General.—A Charter must be considered as a deed or as an Act of Parliament, and if the Fellows say they could not proceed, my answer is, if they were wrong in their proceedings on Trinity Monday, they could not on Trinity Tuesday say the time is now past, and we cannot elect. We would be satisfied if you were to send the matter back to the Provost and Fellows, on the ground that Mr. Purser was ineligible, and declare that there should be a new election. I have not touched upon the doctrines of the Moravian Church; we do not think that it is necessary to do so. It is sufficient for my purpose that there is not any allegation that Mr. Purser is a member of the Church of Ireland, and we do not admit that before the passing of the Church Act the doctrines of the Moravian Church were similar to the doctrines of the Church of Ireland. Taking it before the passing of the Church Act, it must be admitted that the Moravians did not accept the Sovereign to be the Head of the Church, therefore they could not

have conformed to the Thirty-nine Articles. It also appears that they do not admit the legality of bearing arms. Again, they are averse to take an oath, and do not recognise the possibility of its justification arising. There is a material difference also between the Moravian and Irish Church in reference to their belief in the Third Person of the Trinity. In some books the Moravians are represented to be a branch of the Greek Church, and they believe that the Holy Ghost proceeds from the Father alone, and not from the Father and the Son. If you refer to the Litany and Hymns of the United Brethren, you will find that they do not agree with the Irish Church in all their views.

VICE-CHANCELLOR.—I think that on this Appeal, if there be any special doctrine which it is contended Mr. Purser held or did not hold, that doctrine should have been specified, in order that he might have had an opportunity of answering the objection. He says that he is a member of the Moravian Church, but he adds that this Church agrees in essential doctrine with the Church of Ireland, and that he has not any objection to the service of the Church of Ireland, and that he has received the holy Communion therein.

Solicitor-General.—If there were any doctrine other than the doctrine of the Moravian Church, it should be specified; but if he states that he is a member of the Church of Ireland, we allege that he holds the doctrines of the Moravian Church. We do not say that he has been convicted of Heresy, but we say that some of the doctrines of the Moravian Church are heretical; and our allegation generally is, that being a Moravian, he seeks to gain a Fellowship arising out of a foundation connected with the Church of Ireland, to which he does not belong.

VICE-CHANCELLOR.—You rest upon the broad argument on which you have distinctly relied, that he is not a member of the Church of Ireland, and therefore he is disqualified. I think it would be inconvenient to pursue the discussion on this point any further.

Solicitor-General.—We hold that, even upon the question of the Procession of the Holy Ghost, it is impossible that he could become, while he entertained such a view, a member of the Irish Church. This peculiar view has been laid down in all their Prayer Books as a part of their faith, and it is a doctrine from which a Protestant Episcopalian would be bound to dissent. We deny, as a matter of fact, that the Moravian Church is even in communion with the Church of Ireland; and we also deny the allegation that the Moravian Church is an ancient Protestant Episcopal Church. They have no Apostolical succession—their first Bishops were drawn by lot. I believe that an

Act was passed, one hundred and ten years ago, in which it was described as a Protestant Episcopal Church; but the opinion is now entertained that it is not so, and we rely upon that opinion. We allege that the Moravians do not believe the Athanasian Creed, that they hold that the Holy Ghost proceeds from the Father alone. They hold, contrary to the Thirty-nine Articles of the Irish Church, that it is unlawful to take an oath before a magistrate, or to bear arms. Although the investigation might be an unpleasant one—and I do not wish to enter upon it unless it become necessary—still, if the Visitors are of opinion that we are wrong, which I hope they will not be, that, upon the broad principle, that a candidate for Fellowship must hold the views of the Church of Ireland, I must suggest that, in some form or another, we shall be able to show that the doctrines entertained by the Moravians are not such as should admit a professor of their creed to a Fellowship in a College founded on the principles and doctrines of the Church of Ireland. Of course we should treat the subject in a manner which would be least likely to produce polemical discussion ; but certainly we can demonstrate that the doctrines held by Mr. Purser are not those of the Church of Ireland.

There is one other matter as to which I think it necessary to make a few observations; it is a formal matter merely; but it appears to us to be open to grave argument, that though a *majority* of the Fellows, with the Provost, may elect to a Fellowship, *all* of them must join in approving of the candidates. This appears from the words (p. 39), "tum Præpositus *tum socii septem seniores*," and if you contrast these words with the words a little lower down, "Eligendi potestas (ut antea statuitur) sit penes Præpositum et *majorem partem* Sociorum Seniorum;" that is, upon a question regarding religion, learning, and morals, there should be a unanimous opinion upon the part of the electing body; and if all agree that he has every qualification necessary for a candidate, a majority would be sufficient to elect him from that class so unanimously approved of. As a matter of fact, one of the electors (Dr. Malet) refused to vote for Mr. Purser on the ground of his religion.

I present this view, that a religious trust has been fixed on the College by the Statutes of Elizabeth and Charles, and that no subsequent Statute has given to a person of Mr. Purser's religion the privilege of being admitted to a Fellowship, and we should, therefore, consider the question as if it arose at the time when the Charter was framed; and as if Mr. Purser presented himself as a candidate then, was eligible to be elected to the Fellowship, and was not admitted to the office, because he refused

to take the oath. The course now remaining is, to elect Mr. Minchin, although the day for election has passed; otherwise the election cannot take place for a year.

VICE-CHANCELLOR.—The Statutes that are read to the electors before the election takes place fix the import of the oath. It is a judicial proceeding, and the electors choose the person whom they, in their conscience, believe and adjudge to be the fit and proper person. Your argument is, not that there is anything in these Statutes expressly disqualifying Mr. Purser, but that there is something outside of that. You say that they must make their selection from the candidates who are members of the Church of Ireland; and though they have conscientiously obeyed these Statutes, and there is not any impeachment of their decision on the ground of misconduct or miscarriage, amounting to a breach of trust, that, outside all this, there is a disqualification arising from the Charters, and that no one in accordance with these can lawfully be elected who is not a member of the Church of Ireland.

Solicitor-General.—My argument, in conclusion, is, that it is the same as if it were written in the Charters themselves—"No person hereafter shall be elected a Fellow of the College unless he shall be a member of the Church of Ireland." I submit that it must be taken as if these very words were in the Charters, and it is not any matter whether the words have been written therein, or the meaning is to be gathered from them. Lastly, I say that even if Mr. Purser were eligible, his refusal to make the declaration rendered his election to the office of Fellow void—that he never was admitted as a Fellow—that the said Fellowship was never full—and that the electors are now bound to fill the vacancy. This construction has been adopted for centuries by the authorities of the University, and is that which alone harmonizes with the design, the object, and the general structure of the Statutes of the College.

Mr. Jellett, Q. C. (of counsel for Mr. Purser).—Sir Joseph Napier and your Grace, I appear before you for Mr. Purser, who has been already declared to be the Fellow, and I submit that his title has been fully established, and that the claims put forward by Mr. Minchin cannot be maintained.

I contend that Mr. Minchin must, to maintain the prayer of his memorial, establish—

1st. That the election of Mr. Purser was void *ab initio*, by reason of his being ineligible.

2ndly. That Mr. Minchin was elected to such an office as entitles him, *ipso facto*, to the vacancy; or,

3rdly. That the electors may now proceed to a new election.

None of these propositions can be maintained. Mr. Purser was eligible on Trinity Monday. This is a case in which the franchise is expressly defined, and resort cannot be had to any implication arising from a forced construction of particular words or casual expressions in the Charters. The private opinions of the Founder in case of a Royal Foundation cannot be resorted to as a means of interpreting them, as in the case of a Private Founder. The rule of construction to be applied by the Visitors is laid down in caput xxvii. of the Letters Patent of Charles I., St. p. 103, and it is to be "juxta planum communem literalem et grammaticalem sensum et ad dubium prætensum aptiorem omnes hujus modi ambiguitates interpretari et determinare velint." The Charter of Elizabeth, the first which prescribes a qualification, merely limited the choice of a Fellow to fill the vacancy, by enacting that the person chosen should be "*idoneam personam.*" No doubt the Charter of Elizabeth contemplated religious training, in the words "pie et liberaliter instituendâ ... ut eo melius ad bonas artes percipiendas colendamque virtutem et religionem adjuventur;" but these words plainly point to the promotion of religious feelings and observances, and not to any particular form of creed or Christian doctrine.

The chapter "De Sociorum Juniorum electione," St. p. 39, prescribes both the qualifications and the disqualifications of the candidates. The former are "ii solum cooptentur de quorum religione doctrinâ et moribus tum Præpositus tum Socii septem seniores spem bonam animis conceperint, quique gradum Baccalaureatus in artibus jam susceperint;" in which the word "religione" is used in reference to the Christian religion generally, and not to any particular form of it. The disqualifications on the other hand are expressed,

(1). In the words "*se neminem in Socium electuros qui sit infamiâ notatus, de hæresi convictus, aut moribus et vitæ consuetudine dissolutus,*" St. p. 40.

(2). In the clause commencing "qui nomen suum," St. p. 50, referring to an omission on the part of the candidate to furnish certain particulars relating to himself personally before the day of election.

(3). In the words contained in the chapter "De Cultu Divino," St. p. 50, "Præterea nemo in Sociorum numerum eligatur qui Pontificiæ religioni quatenus à Catholica et orthodoxa dissentit et Romani Pontificis jurisdictioni per solenne et publicum juramentum non renuntiaverit."

The words "de hæresi convictus" plainly point to a judicial sentence of a competent ecclesiastical tribunal, or to a conviction under the provisions of the chapter xxiii. of the Letters

Patent, Chas. I., "De Pœnis Majorum Criminum Mulctisque aut exigendis aut commutandis." This Court cannot entertain a general allegation of heresy, such as is alleged. If Mr. Purser be called on to meet such a charge, there should be a specific and precise statement of what is alleged to be the orthodox doctrine on the matter in question, and of the specific doctrine held by him, and alleged to be unsound. This was laid down in *The Gorham case.* The chapter "De Cultu Divino" has been referred to, but it merely deals with the form of religious worship, and as some one form must be adopted, prescribes the Liturgy of the English Church to be that used. The Prayer Book of the English Church must be regarded as both a Manual of Devotion and a Code of Doctrine. It is in the former sense alone it is referred to in the chapter "De Cultu Divino." Subscription to the Thirty-nine Articles is nowhere required as a condition for being elected to or holding a Fellowship, and this distinction is maintained in the subsequent enactments of the Legislature. The 17 & 18 C. 2, c. 6, requires, by s. 12, that the Provost or Head of the College (who is also the Ordinary of the Chapel) shall subscribe the Thirty-nine Articles, while the Fellows are, by the same Act, only required to conform. to the Liturgy, drawing the same distinction as the Charters between religious doctrine and religious observances.

The Charter and Letters Patent of Chas. I. must be read together. By the former (p. 21) the acts to be done on Trinity Monday are "eligere, nominare et constituere." The oath to be taken by the electors in the Chapel, as prescribed by caput xxv. of the Letters Patent Chas. I., "De electionum forma et tempore" (p. 97) shows that the words "nominare et eligere" apply to the act of the whole body of electors, and "constituere" to the official declaration of the Provost. "Is vel illi pro electo vel electis habeantur et mox pronunciabuntur a Præposito." The meaning and effect of the word "*constituere*" is, that the act to which it refers confers the status of a Fellow, and fixes and establishes him in that office, and the words of Charter, 13 C. 1, declare, that the person described as "electus" (by which a person is intended to be described who has not taken the oath, as appears by the first words of the "Juramentum Socii" (p. 42), "habeat et gaudeat ac habere et gaudere valeat et possit adeo plenam et liberam potestatem et auctoritatem que in omnibus," &c. (p. 21). The proceedings of the day following are merely accessory to the act of election, which is consummate on Trinity Monday, and are merely equivalent to the delivery of possession of the temporalities of the office. No time is fixed by the Statute

for the taking of the oath; and although the usage has been to administer it on the day following the election, this cannot prevail against the words, see Chap. de Conclusione Statutorum (p. 103). The words avoiding the office are words of condition subsequent, as is shown by the words "*jus Societatis amittat*," referring to the "*plenum jus*," acquired on the day after the election, and the conditions vacating the Fellowship on marriage or omission to take Priest's Orders, which immediately succeed it, and are necessarily conditions subsequent, place this beyond question. As terms of a condition subsequent creating a forfeiture of the office, they must be interpreted strictly.

It is admitted that Mr. Minchin's election to the Madden Prize will not entitle him to succeed to the Fellowship without a new election. The electors and the qualification for the Prize under the will of Samuel M. Madden being different. The words of the Statute of Elizabeth, under which the election was directed to be held within two months after the vacancy, being repealed by the Charter and Letters Patent of Charles, by which this provision is repealed, and the election directed to take place on Trinity Monday, are, in fact, equivalent to negative words and, in effect, declare that the election shall take place on that day and no other, having reference to the title of the foundation as "Collegium Sanctæ et Individuæ Trinitatis."

The Visitors cannot, therefore, require the electors to proceed to a new election.

With regard to Mr. Purser's title. He has satisfied the test which was applied with the view of ascertaining whether he entertained heretical opinions; he is willing to conform to the Liturgy and religious observances required by the Statutes of the College. His objections to the reception of the oath, at the time it was tendered, were not grounded on any doctrinal question, but merely because it appeared to involve obligations which, without more consideration, he was unwilling to accept. No time being fixed by the Statutes of the College for the taking of the oath, it is still competent for him to take it.

VICE-CHANCELLOR.—No one shall be elected (it is stated) who shall not take a solemn oath or declaration as specified.

Mr. Jellett.—This refers to what had taken place upon Trinity Monday.

VICE-CHANCELLOR.—Before the election is completed, this oath seems to be required to be taken.

Mr. Jellett.—There is not anything in the Charter requiring that it shall be taken in the Chapel before the College authorities, when, according to the chap. "De Electione Formâ et Tempore," he is to be pronounced *pro electo*.

VICE-CHANCELLOR.—Does it refer to the oath of supremacy and allegiance, which are not now required to be taken?

Mr. Jellett.—The oath of supremacy renounced the jurisdiction of the Pope; he was bound to take that, under the Statute of Elizabeth. Every person taking a degree in the University was bound to take the oath of supremacy.

VICE-CHANCELLOR.—That would only "satisfy" part of the words.

Mr. Jellett.—It does not say that the oath is to be taken before he is declared *pro electo* by the Provost in the Chapel.

VICE-CHANCELLOR.—The Fellow's oath was always taken after the election, and before a formal admission. The word "election" may have a double sense; it is inchoate, until it has been consummated by admission; it is not completed till then, and part of the procedure is taking the oath.

Mr. Jellett.—There is nothing in the chap. "De Sociorum Juniorum Electione" to show that the taking of the oath must precede the admission in *plenum jus*.

VICE-CHANCELLOR.—The statute of Victoria distinctly states that the oath shall be administered according to the usage.

Mr. Jellett.—I cannot refer to that statute as construing the present, that—

VICE-CHANCELLOR.—You must take the existing law of the College—which, in effect, prescribes that before admission the oath must be taken by the elected Fellow.

Mr. Jellett.—There were a number of matters of fact which should be gone through, with a view of determining whether the candidate was eligible—the character of the candidate's life should be ascertained, whether he had been convicted of Heresy, or adhered to the Papal religion. The candidate was bound to declare as to these matters of fact; there was no more difficulty in ascertaining whether he had adhered to the Papal religion than there was in the ascertainment of any other matter of fact.

VICE-CHANCELLOR.—A party cannot complete his title without making the declaration.

Mr. Jellett.—There is nothing in the section requiring that to be done before he is declared elected. On the other hand, they should be satisfied that he was eligible before they proceeded to elect him. The case cited by my learned friend, the Solicitor-General, shows what would have been the language of the Charter if it had been intended that the oath should have preceded admission into the *plenum jus*. The words would then have been "juramento præstato admittantur."

VICE-CHANCELLOR.—What construction can you put upon the 3rd of Victoria?

Mr. Jellett.—I must first determine the meaning of the Statute of Charles. The usage and practice of the College is not of any avail against the words of the Statute.

VICE-CHANCELLOR.—A person cannot properly exercise the duties of his office till he has taken the oath of office. Then comes the Letter of 3rd of Victoria, which says, "And that the said oath, with such alteration and addition, shall on every election of a Junior Fellow hereafter, be administered to such Fellow, in like manner as the oath of a Fellow appointed by the said Statutes had heretofore been administered." The practice had been to administer the oath before admission. It is said in some cases, that taking the oath of office is the admission; others say, it is a part of it; but all agree that without the oath, there is no admission.

Mr. Jellett (when the proceedings were resumed after a brief adjournment), intimated to the Visitors, that he had an opportunity of ascertaining the practice adopted in taking the oath (page 50 of MacDonnell's Statutes); he understood that it was a distinct oath from that which was administered under c. 7. It was taken with a view of ascertaining whether the party had adhered to the Papal religion, or, if he had professed it, that he had renounced it. This was for the purpose of ascertaining if he were eligible—but that was a different oath from the oath in c. 7. The Fellow's oath does not amount to a renunciation of the Papal religion.

VICE-CHANCELLOR.—Has Mr. Purser taken any oath that corresponds with the oath required?

Mr. Jellett.—He was asked whether he had any objection to take the declaration, and his reply was that "he was willing to do so."

VICE-CHANCELLOR.—The Statute required an oath; but it may have been converted into a declaration. The condition is, that he shall make a declaration at least.

Mr. Jellett then read the passage in the printed statement, in which it was set forth, that the attendance of Mr. Purser was required in the Board Room by the Provost and Senior Fellows, and "the Provost having asked Mr. Purser whether he fully assented to the declaration, he replied that he fully assented to it."

VICE-CHANCELLOR.—His having answered a question does not amount to making a solemn declaration.

Mr. Jellett.—The Charter does not require it, and his statement may be accepted as to his eligibility, if the usage be to do so.

VICE-CHANCELLOR.—What oath has he taken, or what declaration made, equivalent to it?

Mr. Jellett.—He assented to the declaration.

Vice-Chancellor.—I cannot say that an assent is equal to making a solemn declaration. As at present advised, I am of opinion that there was an election on Trinity Monday, when Mr. Purser had been formally declared to have been the party who was elected; but this should have been completed by making the declaration, on which there would have been the admission,—the final act of admission is consequent upon making the declaration. No one shall be admitted nor become a Fellow with the full rights of a Fellow, until he shall have made the declaration; and I would consider, if he had made the declaration corresponding with the Fellow's oath, that would be sufficient, but I do not see any such; there is nothing but an answer given to the Provost, I am sure an answer in perfect accordance with the truth, that he could make the declaration, but he has not made it.

Mr. Jellett.—If the forfeiture of an office is to result from not having taken an oath, that oath should have been tendered to him.

Vice-Chancellor.—I think not.

Mr. Jellett.—There is not anything to show it should be administered before the Fellow's oath, it has not been invariably pursued, and if the Board was satisfied with a declaration, and did not require an oath, they cannot rely on the omission to take it.

Vice-Chancellor.—Has not the practice always been, before the 3rd of Victoria, to elect the Fellow on Trinity Monday—and to administer the oath on Tuesday as a thing to be done before admission?

Mr. Jellett.—That I was coming to, but I am at present dealing with what I stated—a preliminary declaration—to satisfy the electors he was eligible.

Vice-Chancellor.—Is there any instance of a different oath having been administered, besides the oath of the Fellow?

Mr. Jellett.—There have been several instances, in which, as I understand from members of this College, an oath has been tendered, to test whether the person was an adherent to the Papal religion, or if he, having been an adherent, renounced the religion, independently of the Fellow's oath, and before the oath of the Fellow is administered that is to determine whether he was eligible.

Vice-Chancellor.—Shall you be able to give evidence to prove this?

Mr. Jellett.—Yes, before the inquiry closes. If it were intended to render the taking of the oath a condition precedent to the election, it would have been provided for in the chapter,

"De Electionum Formâ et Tempore," and a provision made for tendering the oath on that occasion; or if it were intended to be a condition precedent to admission, this would have been provided for by words similar to those employed in the *Case of the Queen's College, Cambridge*, "Juramentum Sociorum *pro præstito* admittantur ad totum jus et emolumentum Societatis." These words would have been inserted if it were intended to be a condition precedent to admission, and I rely upon it that the words which are in the Statutes applicable to Cambridge are not in the Statutes of this College.

VICE-CHANCELLOR.—How does this affect the words used in the Letter of 3rd Victoria—"And that the said oath, with such alterations and additions, shall, on every election of a Junior Fellow hereafter, be administered to such Fellow"?

Mr. Jellett.—That leaves the case as it was; a misrecital of a Statute does not amount to a new enactment.

VICE-CHANCELLOR.—It is a condition precedent to admission. The former Statute omitted to specify the time for taking the oath; but here it is said, "the said oath shall, upon every election of a Junior Fellow hereafter, be administered to such Fellow." That oath is to be administered as a condition precedent to admission.

Mr. Jellett.—If you have made up your mind on this point, I shall close this branch of my argument.

VICE-CHANCELLOR.—No, proceed; take your own course.

Mr. Jellett.—The particular course of procedure is defined. There are three things to be done—"eligere, nominare, et constituere;" but there is nothing that requires the calling on the candidate to take the oath before election, or as to the administration of it.

VICE-CHANCELLOR.—The elected Fellow cannot enjoy any right till the next day after the election, nor till he has taken the oath; and until then he is not entitled to the full rights of a Fellow.

Mr. Jellett.—The Statute does not say so. It declares that "omnes electi admittantur in plenum jus *deinceps* percipiant ea commoda."

VICE-CHANCELLOR.—So, you contend that upon the Trinity Monday he is clothed with a complete title to the full rights of his office?

Mr. Jellett.—No; but with the rights conferred by the words "eligere, nominare, et constituere;" and if you trace down the history of what is to be done, you shall see this—on the Trinity Monday certain things are to be done, and on the Trinity Tues-

day he is admitted into the *plenum jus*. This is an admission into the temporalities of his office, and is done after the election. In the original constitution of the College there were only three Fellows and a Provost; the number was increased, and a provision has been made in reference to existing Fellows, who are required to take the oath. The term for which they formerly held was seven years, and by that provision they are to hold for life. I have some difficulty in following the argument of the Solicitor-General, because he says the alteration in the Act was merely to meet the state of things existing at the time it passed; and he said it was not intended as a condition precedent for reading for Fellowship, that the oath should be taken; but that if the existing Fellows refused to take it, they were to be removed from the College. As I understand his argument, he says this was only a temporary provision; it is very hard to say that it was so. If, however, it was a temporary provision, it does not govern the election of future Fellows, and *cadit quæstio;* but if a provision, applicable to future elections, I have it that the person who refused the oath was a *Socius*, and the clause as to the oath a condition subsequent.

VICE-CHANCELLOR.—The word election has a limited and a loose signification. The election after the result has been declared has not completed the procedure. Lord Hardwicke said, in a case before him, that the right was inchoate, and that the full right of office did not attach till the oath had been taken. The practice has been to administer the oath upon Trinity Tuesday; and the 3rd of Victoria makes this clear in words, which previously rested merely on practice.

Mr. Jellett.—My argument is, that the estate of the candidate is complete when he is elected, subject to be divested of it on his refusal to take the oath. The forfeiture of the office does not take place till he declares he will not complete the requirements by the oath. My learned friend states that the election on Trinity Monday was void, because Mr. Purser, at a subsequent occasion, refused to take the oath. The election was valid, having taken place on Trinity Monday; the election is rendered void by the refusal to take the oath, but not till then. I have gone through the qualifications required, and it is plain, unless he falls within the category of disqualification in page 50 of the Statutes—"Porro Præpositi et Sociorum"—there is not anything to render him incapable. What is the allegation in reference to Mr. Purser entertaining heretical opinions? Lord Langdale, in his judgment in the *Gorham case*, in which the extraordinary course was resorted to of referring in pleading to an entire

book, instead of making a precise case, and supporting it in proof, laid down the rule as to the form of pleading in such cases—"As this form of pleading was acquiesced in on both sides, neither party has any reason to complain of the other; but those who are called upon to judge of the matter in difference have great reason to complain that instead of their attention being directed, as it ought to have been, to specific propositions distinctly stated, and to the evidence directly applicable to those propositions, instead of having a specific and precise statement of that which the Bishop alleged to be the doctrine of the Church of England upon the matters in question, and upon which he meant to rely, and of the specific doctrine held by or imputed to Mr. Gorham, and alleged to be unsound, the case is brought forward and left in such a form that, without being supplied with any allegations distinctly stated, or any issue distinctly joined, we are required minutely and accurately to examine a long series of questions and answers, questions upon a subject of very abstruse nature, intricate, perplexing, entangling, and many of them not admitting of distinct and explicit answers, and answers not given plainly and directly, but in a guarded and cautious manner, with the apparent view of escaping from some apprehended consequence of plain and direct answers."

I apprehend that the Visitors will not, in conformity with these principles, entertain a general charge of Heresy; and I am prepared to join issue upon the question, whether or not the doctrine of the Moravian Body as to the Third Person of the Trinity is at variance with those entertained by members of the Irish Church. What is the meaning of Heresy; when no definition of is has been given of the offence by the Appellant, and when Mr. Purser is charged with holding doctrines contrary to the Statute of Charles I., we must ask what was the meaning of the word at that time? There is a provision in the 2nd chapter of 1st of Elizabeth, sec. 17, for the punishment of offences prejudicial to religion; and I have not heard, taking the definition of Heresy to be as it has been laid down in that Act, in what respect the views of Mr. Purser are to be regarded as contravening those views which are regarded as orthodox, and there is not any evidence to show that Mr. Purser entertained any opinions therein pronounced to be heretical. The question was put to Mr. Purser, whether he held any Article of Faith which had been adjudged to be Heresy by decrees of the first four General Councils, and he replied in the negative; and in the absence of any allegation that any of the doctrines

entertained and insisted on by the Anglican Church are denied by Mr. Purser, I apprehend that the charge of Heresy has totally and entirely failed.

Then, it is said that Mr. Purser holds heretical opinions, because he is a member of the Moravian Church. Now, in reference to that Church, I think my learned friend the Solicitor-General is rather under a mistake. In order to establish this, we should look to the books which describe the origin of the Moravian Church. That Church claims to be an ancient Episcopal, and Apostolical Church; it is not an heretical Church in any respect. Its existence dates long prior to the time when the great controversy of the sixteenth century arose; it is a Church that claims to have existed so far back as the ninth century; a Church that has been continued down to the present time through regular succession; a Church in communion with the Irish Church, and recognised by Acts of Parliament. Mr. Purser is willing to conform to the religious observances required by the Statutes; and if the opinions of the Moravian Church are to be scrutinized, it will be found (on a reference to Marsden's Christian Churches, Vol. I., p. 100, and Hook's Church Dictionary, p. 518), that it is an Episcopal Church, that it existed antecedent to the English Church, and is no more heretical than the Greek Church can be said to be heretical; a Church in communion with the English Church, as will appear from the Statute 22nd Geo. II. You will find, in the *Encyclopædia Metropolitana et Britannica*, a letter addressed by the Archbishop of Canterbury, in July, 1737, to the Bishop of the Moravian Church.

VICE-CHANCELLOR.—I have some doubt how far we can go into this question.

Mr. Jellett.—I find that this has been done in charity cases in England—in *Lady Hewley's case*, and in other cases.

VICE-CHANCELLOR.—It is said that Mr. Purser is not a member of the Church of Ireland, and I do not think we would be justified in entering into a further disquisition upon this subject.

Mr. Jellett.—I may, at least, refer to a Statute—the 22nd of Geo. II., c. 30 (1749)—"an Act for encouraging the people known by the name of *Unitas Fratrum*, or United Brethren, to settle in His Majesty's Colonies in America." This Act recites: "Whereas many of the people of the Church or congregation called the United Brethren are settled in His Majesty's Colonies in America, and demean themselves there as a sober, quiet, and industrious people—" I refer to this Act to show that the argument is a futile one, that this Church was not countenanced by the Church of England, and that no doubt can be entertained

that it was recognised as an Episcopalian Church. It is said that the Moravian Church entertain scruples against taking oaths, or using arms. These are not theological doctrines, and cannot be made the ground for a charge of Heresy. Mr. Purser does not object to conform to the Liturgy of the Church of Ireland, which is all that is required in the chapter *De Cultu Divino*. It is prescribed that prayers shall be offered in the Chapel a certain number of times in the day; it is prescribed what is to be done upon the Sunday and in Lent; forms of prayer for morning and evening service during the week are to be observed; the Bible is to be read daily. The Holy Communion is to be celebrated and Heresy is to be checked. With the exception of this provision to the checking of Heresy by the Provost and Senior Fellows, there is not a word about doctrine. It consists of little more than a formula of attendance, and technical duties. The only other argument I have not noticed is that derived from the Letter of the 18th Victoria. To understand the meaning of this, you must bear in mind the state of the law before the passing of the 34th of Geo. III. Prior to that Act it was necessary for Roman Catholics to take the oath of allegiance, abjuration, and supremacy. The Act of Geo. III. passed, and in it there was a provision placing Roman Catholics in a position enabling them to take degrees, upon taking the oaths of allegiance and abjuration; but the Non-conformists, under the Acts of Elizabeth, and Wm. & Mary, were obliged to make a declaration acknowledging the supremacy of the Crown. The Puritans strongly objected to take the oath of supremacy. (Hallam's Constitutional History, p. 185.)

Vice-Chancellor.—The law was extended in the right direction, and full freedom of conscience and education was afforded.

Mr. Jellett.—The effect was to place Protestant Dissenters in the same position as that in which the Roman Catholics had been placed by the Statute 33 Geo. III. c. 21.

Vice-Chancellor.—Are there any duties incumbent upon a Lay Fellow to which Mr. Purser could conscientiously object?

Mr. Jellett.—None. I am dealing with that; I take the case as it stands. I admit that at a certain period, namely, when the three years have elapsed from taking the Master's degree, he is bound to take orders, unless he gets a dispensation, or is one of the five who are mentioned in the Statute. In that sense the Fellows must be members of the Church of Ireland; but that is not the state of facts in this case. What was the argument of the Solicitor-General? He said, that one of the doctrines of the Church of England was the supremacy of the

Crown. There has been a little misconception on his part as to the meaning of that.

The principle of the Queen's supremacy is not in any sense a religious doctrine, nor is it necessarily connected with the existence of the Established Church. It merely asserts, in opposition to the Roman Catholic Church, that an appeal lies in all cases to the Queen's Courts, and that her authority is supreme; and this principle applies as well to Churches in the Colonies which were never established, as to the Church of England, which is so. According to this principle, an appeal lies to the Civil Tribunals, where the discipine of the Church is a matter of contract, as it arose in the cases of the Bishops of Cape Town and Natal, and as it would be if a dispute were to arise under the present constitution of the Disestablished Church of Ireland. You cannot deprive a person of the right to appeal to the Courts of the country. This principle is not denied by the Moravians. I submit, therefore, upon the facts brought before the Board, that electing Mr. Purser a Fellow upon Trinity Monday, and declaring him to be elected, in front of the Chapel, constituted him a Fellow, and that his Fellowship has not been vacated, no particular time being prescribed within which Mr. Purser should take the oath or make the declaration. What did take place is explained in the answer of the College, namely, that Mr. Purser declined *at present* to take the declaration. The question is, whether or not the refusal of Mr. Purser to take the declaration, *at that moment*, renders the election void? In the first place, no particular time is limited by the 7th chapter of the Statute of Charles for taking the oath. It may be tendered at any time, and Mr. Purser declining at present to take the oath was not an absolute refusal, nor is the mere fact of requiring time to consider the course to be pursued by him sufficient reason to justify the Visitors to declare that the election is void. No case can be cited in which a demand for time to consider the effect of an oath, before taking it, has been held to amount to such a refusal as will create a forfeiture of an office. This is all that Mr. Purser has done. I submit, upon the whole of the case, first, that there has not been any forfeiture by the mere act of Mr. Purser saying that he required time to consider the course he should adopt. In the next place, if there were a forfeiture, it occurred after the time that the election had taken place, and the vacancy can be supplied only upon Trinity Monday in the following year. Having submitted these two points, I now turn to a consideration of the title of Mr. Minchin, with which my learned friend has not dealt.

Vice-Chancellor.—How is your case affected by the ques-

tion of Mr. Minchin's title? Supposing that Mr. Purser was not originally disqualified, and the forfeiture took place on the Tuesday, how would you be affected by Mr. Minchin's title?

Mr. Jellett.—He asks for the place.

VICE-CHANCELLOR.—And you would leave the place open?

Mr. Jellett.—It is the interest of my client that the place should be left open. I cannot tell what may happen in the interim.

VICE-CHANCELLOR.—The Solicitor-General did not seem to press this.

Mr. Jellett.—What is Mr. Minchin's title? It is founded upon a misconception; he is under the impression that one of the Fellows voted for him at the election; his case is that he got the only valid vote, and, therefore, he is entitled to the Fellowship. He did not get that vote; he is mistaken, and, therefore, he is not in a position to say that all the votes of his adversary have been thrown away. He also says he had obtained the Madden Prize, and, in case the Fellowship is declared to be void, he is entitled to stand in the place.

VICE-CHANCELLOR.—I shall relieve you from this question. The Solicitor-General has opened his whole case, and this point has not been pressed by him.

Mr. Jellett.—It was stated upon the face of the Petition, and this was the reason why I have referred to the matter. If there should be any reason for replying to the point, in consequence of its being raised at any future period of the investigation, you will afford me the opportunity of doing so.

VICE-CHANCELLOR.—Certainly.

Mr. Jellett.—On these grounds, then, I submit that Mr. Purser was eligible to fill the office, and was constituted a Fellow by the proceedings on Trinity Monday.

The Right Hon. John Thos. Ball, Q. C., M. P.—As counsel for the Board of Trinity College, I shall in the observations I submit to the Visitors confine myself entirely to a consideration of the course of procedure adopted by them. No matter what may be the policy of a law-giver if, not resting on what may be inferred from policy, he proceeds to prescribe a particular course of action in reference to any matter, his directions must regulate the conduct of all parties concerned. In the present case, whatever may have been the policy of the Founder of the College, the course to be pursued upon the occasion of an election to a vacant Fellowship is pointed out by express regulation. Positive and precise rules are laid down: First, to guide the proceedings of the Board: Secondly, to impose tests and conditions upon the successful candidate as preliminaries to his pos-

session of the office. The law-giver trusted to the concurrence of these rules, to guard and preserve whatever religious or doctrinal views it was intended should be required. The rules upon the first point are contained in the 7th and 9th chapters of the Statutes. By the latter, the Board are in plain terms prohibited from electing a Roman Catholic—by the former, three other grounds of disqualification are stated. A candidate is not to be elected, "qui sit: (1) infamiâ notatus; (2) de heresi convictus; (3) moribus et vitæ consuetudine dissolutus." These three grounds of disqualification, and these three only, are prescribed to be applied by the Board, of their own motion and knowledge, when selecting from among candidates not Roman Catholics.

With respect to the second matter—namely, a further test to ensure a proper choice, demanded not from the electors, but the candidate—the rules will be found in the 8th chapter of the Statutes, which sets out what was formerly an oath, and is now a declaration to be taken by the candidate after his election. It is to be observed, that while these tests operate to exclude Roman Catholics and persons disqualified on the other grounds which I have mentioned, none of them require an affirmative profession of adherence to any particular denomination of religion, such for instance as would be involved in subscription to the Thirty-nine Articles. It has been already remarked in the arguments in this case, that the proceedings connected with the election of a Junior Fellow are threefold: (1) the examination; (2) the election out of the candidates who have been examined; (3) the admission into office. Each of these has a time fixed for it. The examination the week before Trinity Sunday: the election the Monday after that day: the admission to office the Tuesday after. It is on the Monday any question as to the disqualifications which the Board of themselves are to notice arises; on the Tuesday before admission, the test of the oath or declaration comes into action. Accordingly, when in the present case the Board met on the Monday after last Trinity Sunday, all the candidates being Protestants, if they adhered to the Founder's directions, they had, so far as personal disqualifications were concerned, only to see, if any were "infamiâ notatus, de hæresi convictus," or "moribus et vitæ consuetudine dissolutus." They had no right to travel out of their Founder's written law and plain injunctions. And what could be more inconvenient or liable to failure in result, than that they should leave the path mapped out for them, and wander into speculations upon policy, of which they were not very adequate judges, and upon which there was room for much disagreement of opinion?

When Mr. Purser entered College he had defined himself as a Moravian. A candidate for Fellowship does not on that occasion make any new profession of religion. This declaration at entrance was all that he had stated on the subject. Accordingly, the Board, satisfied that he was not "infamiâ notatus," nor "moribus et vitæ consuetudine dissolutus," put some questions to him with a view to the remaining ground of disqualification. They read to him the clause in the Statutes relating to the Roman Catholic religion, and he replied he fully assented to it. They then questioned him as to heretical opinions. This I apprehend was unnecessary, because the words of the Statute are "de hæresi convictus;" but notwithstanding, "ex majori cautelâ" he was questioned: and the case must now be considered having also regard to his answers. The question put was founded upon the Act of Elizabeth (II. c. i.) already cited to the Visitors, which restricts Heresy to something adjudged to be Heresy by the first four General Councils, or by any other General Council wherein the same was declared Heresy by the express and plain words of the Canonical Scriptures—that is in effect by the first four General Councils—for the 5th and 6th, as is explained in the Bishop of Ely's work on the Articles, are viewed as continuations of the fourth. The question put to him was, did he hold any article of faith which had been adjudged to be Heresy by the decrees of the first four General Councils, or by any of them? To which he answered in the negative. Further, he stated that he had frequently received the Holy Communion in the Church of Ireland—the last occasion being recently in Belfast. In Mr. Purser's answer to the present Petition to the Visitors (paragraph 7), he adds that he also stated to the Board that he had not any objection to attend the services of the Church of Ireland. Now, with such answers, what course was open to the Board but to elect Mr. Purser? they could not foresee that he would refuse to take the declaration. Their duty on the Monday was simply to elect: and in all things preliminary to election, and all the incidents of election, rigidly to adhere to the mandates of their Statutes. On the Tuesday he refused to take the declaration; but the grounds which, in his answer, for the purpose of this Visitation he alleges for his refusal, are peculiar, and consistent with his former answers. He states that "his objections to making the declaration were not due to any peculiar doctrines or tenets of the Church to which he belongs; but might, in his opinion, exist equally in all cases where a person elected to a Fellowship in the College had no intention or desire to devote himself to the study of Theology, or to enter Holy Orders."

Here I may observe, that there are no grounds for holding a student permanently bound by the religious profession assigned at his entrance. He might then describe himself as a Roman Catholic or a Unitarian, religious professions both excluded from Fellowship—the former by plain, prohibitory language; the latter (as it appears to me), by the definition of Heresy in the Act of Elizabeth. But suppose he had during his collegiate career changed his views, is he to be excluded? For what reason? All that is required in the 9th chapter of the Statutes as to a Roman Catholic is, that he should renounce his errors. On what ground can a different rule be adopted in reference to Protestant Dissenters? Therefore subsequent inquiry—made several years after Mr. Purser's first declaration of religious profession—was right. Without entering into any question of a wider or more extended character, and confining the inquiry to the acts and answers of Mr. Purser, which, for the reasons I have urged, were alone to guide them, the Board had no alternative course open to them; and if Mr. Purser were the best answerer, and no other subject of consideration prescribed by the Statutes interposed against his claim, they were bound to elect him. When they had elected him, other tests of the propriety of admission arose. The Statutes prescribed that the elected candidate shall take an oath, or according to recent legislation, a declaration. But nothing could be more improper than for the Board, before he had been challenged as to his religious professions, nothing more unjust, than to have anticipated his answers, and then, upon their own suppositions as to his belief and conduct, exclude him.

VICE-CHANCELLOR.—If from what the Board knew as to the principles of the candidate, they believed and concluded that he could not conscientiously take the oath, might not that operate as a prohibition? Take for instance the case of a Roman Catholic: the Board, aware of his principles, would naturally feel that he could not conscientiously take such an oath or declaration, and might they not in such case refuse to elect him?

Dr. Ball.—But suppose between his entrance, when he professed himself a Roman Catholic, he had changed his religion, could the Board enter upon such an inquiry? Could they judge his *bona fides?* Whether he would or not take the oath was a matter for the conscience of the candidate himself.

VICE-CHANCELLOR.—But the oath includes a test, and the Board might have reason to conclude that he could not conscientiously take the oath.

Dr. Ball.—The oath, no doubt, has a bearing upon the religious aspect of the matter, because it contains several decla-

rations which are connected with religious subjects. The elected candidate declares that he will oppose all opinions against the truth of the Scriptures: he recognises the supreme authority of the Sovereign, uncontrolled by foreign Prince or Prelate; declares expressly his hostility to Roman Catholic tenets, and to opinions against the truth of Scripture, "quas vel Pontificii, vel alii contra sacræ Scripturæ veritatem tuentur:" then the profession of Theology is to be the end of his studies, unless God otherwise incline his mind, or he be elected to a lay Fellowship, of which there are five. But while there is a certain allusion in the oath to a religious profession, what is there to lead to the conclusion that the Founder of the College did not consider that what was prescribed in that oath was sufficient to bar and keep out from the Fellowship any person who should not be admitted thereto? In the present case Mr. Purser refused to take the declaration by recent legislation substituted for the oath. Two views may be presented in respect of the consequences of this refusal—one looks only to the words of the College Statute, 3rd Vict. (page 300, MacDonnell's edition), viz.: "that the said oath, with such alteration and addition, shall on every election of a Junior Fellow hereafter be administered to such Fellow in like manner as the oath of a Fellow appointed by the said Statutes had heretofore been administered"—that is (drawing in the "consuetudo" of the College), that such oath or declaration shall be an indispensable preliminary, a condition precedent, to admission to the full rights of a Fellow.

VICE-CHANCELLOR.—The title is not complete until admission, and the admission requires the taking of the oath or declaration.

Dr. Ball.—The candidate has an inchoate, but not a complete right. But however this may be on this view of the legislation, there is another view founded upon another part of the Statutes. According to this, there is an express enactment that the candidate who will not take the oath shall forfeit his right of Fellowship; "amittat jus Societatis"—an expression which, like the phrase "amittere jus imperii" (known to the students of Cicero), implies subsequent forfeiture, not previous disqualification.

VICE-CHANCELLOR.—You cannot make a temporary provision permanent, because subsequent legislation simply amends it.

Dr. Ball.—But the subsequent legislation is to be regarded. The Statute 18 Vict. (page 67, 2nd vol., MacDonnell's edition) assumes that the clause in the Statute of Charles I. had reference to all future Fellows, as well as those then existing; that is, secured by a Royal Letter; a construction has been put on

it. Further, the clause in the original Statutes (page 42, MacDonnell's edition, 1st vol.) includes Scholars as well as Fellows, and there was nothing as to the Scholars of that day peculiarly requiring the provision. Also the next passage in the Statute as to the marriage of Fellows and Scholars clearly applies to the future as well as to the then present Fellows. But I do not pursue this further, because whether we proceed under the "consuetudo" approved by the College Statute, 3 Vict., or under the original Statute of Charles, as interpreted by the College Statute, 18 Vict., equally we find the oath or declaration a condition precedent to admission. If this be so, then the Board which had been right in electing Mr. Purser were equally right, upon his refusing to make the declaration prescribed by the Statutes for the elected candidate, in declining to admit him to the Fellowship. As to a candidate having, as has been suggested, his own time to make the declaration, that is clearly an untenable proposition. May he delay for a year—if so, why not for his life? Clearly the rule is forfeiture, if he refuses when the oath or declaration is tendered.

VICE-CHANCELLOR.—It may be said that the purpose was to have the vacant places filled up and all the requirements of the College Statutes fulfilled, and it was necessary that the forms should be observed at the proper time; that the number of newly elected Fellows should be complete, so as to be in a position to set about their duties immediately. The oath is administered after the election, and where the party refuses to take it, he must not be admitted. Whether there is a forfeiture here is another matter.

Dr. Ball.—This is all I wish to establish: and in my opinion it is more advisable for the Board not to put forward views of their own: their duty is to act in accordance with the decision of the Visitors, irrespective of their own opinions. I have endeavoured to show that throughout all these proceedings the acts of the Board have been in strict compliance with the provisions of the Statutes, and that they have not travelled out of them.

VICE-CHANCELLOR.—It was admitted by the Solicitor-General that the question of disqualification or of forfeiture was independent of the course taken by the Board, which he did not impeach.

Dr. Ball.—All that I require, or desire to do, is to show that the Board acted in the discharge of their duties with rigid adherence to the provisions of the College Statutes. If a question of policy is raised, the consideration of that matter entirely rests with the Visitors. Indeed the whole decision is in the

hands of the Visitors; we do not deny their power; they have in the matter almost absolute jurisdiction.

VICE-CHANCELLOR.—Suppose that we should happen to decide that the election has been void, can we direct that there shall be a new election?

Dr. Ball.—Whether that course is to be pursued depends upon the Statutes; and so far as we can see, there is no provision enabling a second election for a vacancy created by the subsequent avoidance (if any) in consequence of Mr. Purser not taking the oath. There are various reasons why, as the Board are the electors, they should not interfere in that question. It is not for them, but for the Visitors, to decide what course is to be pursued. All I am concerned in is to show that the acts of the Board have been in accordance with the laws and usages that govern the University, and to express their willingness to proceed in the future, according to whatever directions may be given by the Visitors. I have already observed that there is no provision in the Statutes to enable the Board anew to elect out of the former candidates, where the perfect filling of the office is prevented by a cause arising subsequent to the day of election.

The Court was adjourned.

SECOND DAY—SATURDAY, JUNE 15.

The Court resumed its sittings, and the argument on behalf of the Provost and Fellows was continued.

Mr. Tandy, Q. C.—In this case I appear with my friend, Dr. Ball, for the Board of this College; and our duty, I conceive, will be to state as shortly and as clearly as we can the facts and circumstances which have given rise to this Visitation, and to submit to you that the Board have acted right in all things: the final decision will then rest with the Visitors. My learned friend, the Solicitor-General, commenced his argument and occupied much time by stating cases which were applicable to private trusts. I submit that these have not any application to the present case. This is a foundation for educational purposes, established by Charter of Elizabeth, and no doubt, as education was then considered, it was to be accompanied by some kind of religious instruction. But a foundation of that description—an act of State—is to be regarded as different from a private trust, and must be viewed in a different manner. I

shall call your attention to a passage in *Amos upon Jurisprudence*, p. 281. In dealing with Corporations of this description, he says:—"The Board who nominate this foundation are treated as public officials rather than as private trustees. Such corporate bodies are oftentimes directly appointed, changed, and controlled by the executive authority; and those rights and duties are interpreted and enforced, far rather in view of the general interests of the whole community, than of any particular body of persons however immediately concerned." You will find on reference to the case that has been cited by the Solicitor-General—the *Chelmsford Grammar School*—founded by Edward VI. (1 K. & J., 543), that although the Vice-Chancellor states that education should be accompanied by religious instruction, still he carefully avoids saying that it should be exclusively appropriated to the Protestant religion, which it would be if the religion of the Founder, Edward VI., was to be followed strictly; but he leaves it to the Governors to make rules that the Scholars shall be instructed in religion, according to such statutes and ordinances as shall be made from time to time by the Governors, pursuant to the powers contained in the Charter. These are general words, which gave considerable latitude to the governing body. The scheme proposed by the Attorney-General provided that the scholars should be taught in the Holy Scriptures, the Church Catechism, the Liturgy, doctrine, and discipline of the Church of England, but added a proviso, that no child whose parents objected thereto should receive such instruction. The scheme of the Petitioners proposed religious instruction in almost the same words as those used in the scheme of the Attorney-General, but omitted the proviso. The Vice-Chancellor rejected both these clauses in the schemes, and substituted the words I have mentioned. We must judge of this case, having regard to the answers given by Mr. Purser to the Board of Electors when they called him before them. He adopted the tenets of the Four Councils; he said that he had partaken of the Holy Communion as administered in the Church of Ireland, and that he had not any objection to attend the services of the Church. So much upon general subjects; but here the matter is narrowed, when we consider the specific rules and Statutes under which the Board were bound to act in the matter of the election. First I shall call your attention to the oath to be taken by the electors before they proceed to their election. At page 97, in the Letters Patent of Charles, you will find this oath—"Ego G. C. Deum testor in conscientiâ meâ me Statuta *nuper lecta* fideliter, et integre observaturum, et illum vel illos in Socium, vel Socios, aut Scholarem discipulum, sive

Scholares discipulos nominaturum, et electurum quem, vel quos Statuta *nuper lecta* significare, et apertius describere mea conscientia judicabit omni illegitimâ affectione, odio, amore, et similibus sepositis."

VICE-CHANCELLOR.—As I understood the argument of the Solicitor-General, which was clear and candid, he raised no question upon this point. The Board, following the Statutes to which you refer, had made a choice which could not be interfered with, provided they had selected a qualified candidate, but behind that there was the disqualification alleged, as growing out of the general construction of the words of foundation; but taking it merely upon these Statutes, and the choice made by the Board, that should be considered to be a fulfilment of their duty. It was left to them to say whether the candidate was or was not fit to be chosen.

Mr. Tandy.—I would submit that nothing further remained for them to do; their duty was fulfilled when they took the oath and fulfilled its requirements and those of the Statutes alluded to in it. The Statutes are clear and plain; they are to inquire into the doctrine, religion, and morals of the candidate, but their inquiry as to "religion" is defined and limited by the words, "Se neminem in Socium electuros qui sit de hæresi convictus." In Burns' Ecclesiastical Law, title, "Heresy," I find the following definition of the word:—"It seemeth that among Protestants Heresy is taken to be a false opinion, repugnant to some point of doctrine clearly revealed in Scripture, and either absolutely essential to the Christian faith, or at least of most high importance." He goes on to refer to the Statute (1 Elizabeth, ch. 1), and says that the rules there laid down will be good directions to Ecclesiastical Courts in relation to Heresy. As to the term "convictus" used in the Letters Patent of Charles. It is curious that a distinction is taken in Butler's Coke Littleton, note 391a, between the terms "Popish recusant" and "Popish recusant convict." "When a person of that description"—that is, a Papist or a person professing the Popish religion, "absented himself from church, he filled the legal description of a Popish recusant. When he was convicted in a Court of Law of absenting himself from church, he was termed in the law a Popish recusant convict; and it is also to be remarked that in the old Bedell Statutes, upon which the Letters Patent of Charles are very much based, the words are not "de hæresi convictus," but are "suspected of Heresy." The Letters Patent omit the words "suspected of Heresy," and substitute for them the expression, "de hæresi convictus." I submit that the electors having taken the oath, and having regard to the Statutes lately

read to them, could not go further; their duties were at an end; they had found that the candidate had answered the questions put to him satisfactorily; their duties were prescribed by the Statutes, and they discharged those duties the moment they had ascertained the capacity of the candidate. The creation of this body of electors out of the Corporation, and this definition and limitation of their duties—the special mention in the oath to be taken by them of the "*Statuta nuper lecta*," distinguish this case from those which have been cited. It is quite clear, I submit, that under the Statutes the oath of a Fellow is to be taken after the election and before the admission to the full enjoyment of the office. It was to be a portion of the proceedings which were to take place, "Postridie diei electionis" (page 41 of the Statutes): and again in the same page, "Omnes electi admittantur in plenum jus juniorum Sociorum," and the commencement of the oath is "Ego G. C. electus in numerum Sociorum" (page 42).

VICE-CHANCELLOR.—That can hardly be disputed.

Mr. Tandy.—There was one matter referred to and argued by my friend Mr. Jellett, and as to which the Court appeared to me rather inclined to concur with him. He argued that having regard to the words "reliquos omnes," in the Charter of Charles, the oath was to be taken only by the then existing Fellows.

VICE-CHANCELLOR.—I was somewhat misunderstood perhaps as to this.

Mr. Tandy.—No; the oath was to be taken at all times and by all future Fellows. The language of the Statutes as to the alterations made in the oath from time to time shows that it was to be taken at all future times. The first alteration was made by the Letters Patent of the 52nd of Geo. III., p. 246. This is followed by the Letters Patent of 3rd Vict., p. 301; then come the Letters Patent of the 18th Vict., vol. ii., p. 67—"And whereas it is enacted in the same chapter, that any Fellow or Scholar who, after his election, may refuse to take the oath prescribed by the Statutes, shall be immediately removed from the College; and whereas it is sufficient to remove such Fellow or Scholar from his Fellowship or Scholarship, if the grounds upon which he shall refuse the prescribed oath do not appear to call for his removal from the College; our will and pleasure therefore is, that the words 'illicò Collegio amoveatur' be omitted, and that instead thereof there be inserted the words 'jus Societatis seu discipulatûs, ipso facto amittat, et si ita Præposito et Sociis Senioribus visum fuerit, illicò Collegio amoveatur.'" That asserts and recognises that the obligation to take the oath,

and the consequences of not taking it, attached on all future Fellows under the Statute of Charles; but it modifies the consequences by the substitution of the words "jus Societatis amittat." I submit that there is not anything in the wording of those Letters Patent that does more than was done by the 3rd of Victoria and George III., making those alterations that were rendered necessary by the requirements of the time, and making the oath as obligatory as it had been before.

VICE-CHANCELLOR.—That was not an alteration in the oath.

Mr. Tandy.—That would not make any difference in what I say; the two things are mixed up together—the imposition of the oath and the consequences.

VICE-CHANCELLOR.—The oath as altered by the Statute of Victoria is to be taken upon the day after the election; it had not been before precisely explained.

Mr. Tandy.—There is no particular force to be attached to the word *on;* that is explained in the *Queen's College case* (Jacob's Reports) by Lord Eldon. Let me now come to the next matter. The question then is, what is the present state of things? Mr. Purser was elected, and, as I submit, duly elected upon Trinity Monday. The question then arises with reference to his admission. The election and admission are seperate and distinct things. It will not be necessary for me, I think, to argue the point, or refer to the authority; but if you think it requisite, I will refer to the judgment of Lord Eldon in the *Case of Queen's College* (Jacob 1), which clearly defines the difference between election and admission.

VICE-CHANCELLOR.—They are distinct things; the difference has been quite settled.

Mr. Tandy.—The election having taken place upon Trinity Monday, the event which subsequently took place created a vacancy; he had lost the "jus Societatis," by reason of not having been admitted; and if there is a vacancy, the question is, what is now to be done? I submit that the Board had not any power to proceed to a new election. Their powers were spent by the proceedings on Trinity Monday.

VICE-CHANCELLOR.—Unless what was done upon Trinity Monday (the election) was abortive, in consequence of something defective in itself. Suppose that Mr. Purser had died on the Tuesday morning, would the election on Trinity Monday have been abortive?

Mr. Tandy.—No. Suppose he had died on Monday night, the election would have continued good, and all that would ensue by reason of his not being able to attend to be admitted subsequently, would be that a vacancy would arise.

VICE-CHANCELLOR.—I understood Mr. Jellett to mean, that upon Trinity Monday Mr. Purser was elected, and whatever was the effect of what occurred on Tuesday, it did not react so as to render that election abortive and a nullity.

Mr. Tandy.—That is the way in which I am endeavouring to put it. The words of the Statute as to the time of holding the election are precise. In the Charter of Elizabeth they were to proceed to a new election within two months after the vacancy had arisen, whether the party died or was removed from the office. By the Statute of Charles that time has been changed to Trinity Monday; that was a period fixed, and it could not be changed nor altered. The words in the Charter of Charles I. (pp. 20 and 21) are, "die Lunæ post Dominicam Sanctæ Trinitatis ad tunc proximê sequentem;" and this appears more clearly if you refer to the Letters Patent of the 60th Geo. III. (p. 277), which empowered the Board, with the consent of the Visitors, to alter the College hours:—

"Præposito una cum majore parte Sociorum Seniorum, tempora omnia ad officia quælibet præstanda, aut omnino ad aliquid agendum in Statutis definita exceptis solummodo horâ precum et prælectionum matutinarum, atque temporibus examinationum et *electionum* Sociorum et Scholarium discipulorum cum consensu Visitatorum mutandi, prout res ipsis exigere videbitur."

These are equivalent to *negative* words, and where you have not merely the positive words of previous Letters Patent, ascertaining the time when elections are to be held, but you have the Letters Patent of Geo. III., enabling the College, with the consent of the Visitors, to make alterations in the terms, with the exception of the day of the election, &c. This has all the force which must give the words the effect of an exception, and the exception prevents even the Visitors from altering the day of election. In a note to the College Calendar for this year, in page 382, it is stated: "In the King's Letter (December 29th, 1660), the Provost and Senior Fellows were empowered, after the admission of five new Senior Fellows, to proceed to the election of Junior Fellows, requiring them only to elect Dr. Lambert Goughleman, as one of them." The King's Letter also dispensed "*pro hâc vice*," with the Statutes, and empowered them to hold the election on another day. It appears also from a subsequent portion of the same Calendar, that when, in consequence of the troubled times of the period, an election could not be held upon the particular day, an Act of Parliament was passed to permit its being held at another time. This is consistent with the general rule, that if an affirmative Statute which is introductory of a new law direct a thing to be done in a certain manner, that thing

shall not, even although there are no negative words, be done in any other manner. I submit, having regard both to the positive words of the Letters Patent, the negative words to which I have referred, and the remarkable instances in which, where it was found necessary to change the time of the election, it was considered essential that King's Letters should be passed to enable the election to be held at another time: all these circumstances prove that the power to hold the election was spent upon Trinity Monday. It is also to be observed that one provision of the "Statuta nuper lecta" which the electors are sworn to observe is, that the election is to take place on Trinity Monday. There is a case in which a somewhat similar question arose (*The Queen* v. *The Mayor of Leeds*, Ad. and Ell., 512). That was a case in which the Town Clerk was required to proclaim the names of those who had been elected before two o'clock on the following day. He did proclaim the names of A. and B., but afterwards found, upon further scrutiny, that several of the votes given for B. were illegal, and that C. had the majority of legal votes; and at four o'clock upon the same day he made a second proclamation, declaring that A. and C. had been duly elected; and it was held by the Queen's Bench that the time was fixed at two o'clock, and there was no power to make an election at a subsequent period.

VICE-CHANCELLOR.—Did the Queen's Bench say that they had not the power to have it set right?

Mr. Tandy.—That did not arise. They granted a *mandamus* commanding the Corporation to receive and count the vote of B. at the corporate meetings.

VICE-CHANCELLOR.—They could not allow a man to remain in an office to which he had not been legally elected. Without intimating any opinion on the subject, I would ask, supposing that the election was a void one—supposing that the original disqualification of Mr. Purser rendered it so, or some case of malversation arose, and there had not been, in fact, any valid election, will you say that there was not any power to have an election held according to law?

Mr. Tandy.—I do not think they would have the power. I think the Fellows would have no power of themselves under the Statutes to hold an election upon any other day than Trinity Monday; and if the Fellows, who are bound by the Statutes, have no such power, I submit that the Visitors, who are also bound by the Statutes, have no more power now to order a new election than the Board had. *They* are forbidden by the Statute to which I have referred from altering the day of election.

VICE-CHANCELLOR.—It is the duty of the Visitors to see whether the Statutes have been obeyed; but the Statutes are subject to the principles of the Common Law; and if the day be fixed, and the requirements of the Statutes have not been complied with, there may be a power to remedy this. The Statute as to municipal elections was passed to meet the difficulty, but this would arise only in the event of the election being a nullity by an original defect.

Mr. Tandy.—The entire election could not be a nullity, it could only be null as to Mr. Purser. The election, so far as Mr. M'Cay was concerned, was valid—there is no doubt about the validity of Mr. M'Cay's election; and further, the electors, before they proceed to the election, take an oath that they will observe the "Statuta nuper lecta," one provision in which is (page 98), "Diem vero electionis Sociorum Juniorum ac discipulorum assignamus quotannis diem Lunæ post Dominicam Trinitatis, nisi contigerit tunc temporis Præposituram vacare quo casu electio tantisper suspendatur dum novus Præpositus admittatur." I will now call your attention to a case which bears upon this matter: *The King* v. *The Corporation of Bedford*, 1 East, 79. It was an application for a *mandamus*, directed to the Recorder, &c., to proceed to the election of a Mayor, the office being vacant. The affidavit upon which it was founded stated that Francis Green was duly nominated and elected into the office of Mayor; that notice was given to him to attend and be sworn in, but that he did not attend, and refused to take upon him the office. It was suggested, I presume by the counsel who made the application—for it is stated in a note to the report, that it did not appear upon the affidavits at that time—that Green's reason for such refusal was because he had not taken the sacrament within one year previous to his election, as required by the Statute 23 Car. II., sess. 2, c. 4, s. 12, and, therefore, would not subject himself to the penalties imposed by law on persons taking upon themselves such offices without that qualification. The Court expressed great doubt whether they could, with propriety, grant the writ under the circumstances *disclosed by the affidavit* in this case; for all that appeared was, that Green had been duly elected, according to the usage of the borough, in which case the office of Mayor was already full, and there could be no other Mayor legally elected; that supposing the election to have been properly made, the refusal of Green to take upon him the office availed nothing against the validity of his appointment, but he was indictable for such refusal. Under such circumstances, it would be nugatory to grant a *mandamus* to proceed to that which would be a void election,

and it would involve the borough in difficulties, since all acts done under the new Mayor would be void. The Court, therefore, thought it better in the first instance to grant a rule calling on Green and the late Mayor of the borough of Bedford to show cause why a writ of *mandamus* should not issue to them, commanding the said late Mayor to swear Green into the office of Mayor of the said borough, &c. Gibbs, on behalf of Green, showed for cause the reason above suggested—namely, his incapacity to take upon himself the office, by *reason of his not having before duly qualified himself by taking the sacrament, in which case the Statute of Charles II. avoids the election.* And the Court deemed this a sufficient answer. In that case the Statute of Charles II. *avoided the election*, if the party had not taken the sacrament; but there is no such provision in the College Statute as to the oath. The not taking the oath prescribed by them prevents the party from being admitted to the full enjoyment of his Fellowship; but it leaves his election untouched. He incurs the penalty "*jus Societatis amittat.*" It was insisted—but, as I thought, not very strongly—by the Solicitor-General, that the Visitors have the power to appoint Mr. Minchin to the Fellowship at once; but I submit you have no such power. The answer is, that Mr. Minchin never was elected, and the Visitors, therefore, would not have the power to appoint him to the office. I have merely stated this, because it is right on the part of the Board to give every assistance to the Visitors; I need not say that the Board neither looks to the right hand nor the left. They have not any concern but to discharge their duties as public officers of this great Institution; and their duty is to submit to you, through their counsel, such things as they think bear upon the the case, and they will at once submit to any decision at which you arrive.

VICE-CHANCELLOR.—What effect do you give to the proceedings on Tuesday, supposing the election was so far unimpeachable?

Mr. Tandy.—I think the effect would be to create a vacancy.

VICE-CHANCELLOR.—Is it on account of the passage in the 18th Victoria that amends the original provision? Do you consider that the amendment, if made under a misapprehension, would apply to all the Fellows?

Mr. Tandy.—Yes.

VICE-CHANCELLOR.—Take the original provision in the Charter, and take the amendment in the 18th Victoria, and supposing that the original Charter was applicable only to the then existing state of things, and that the amendment was made

under a misapprehension, do you think that amendment would have the effect of construing the original so that it should apply to all future Fellows?

Mr. Tandy.—My argument is, that the original provision applied to all—both to the existing Fellows and those afterwards elected.

VICE-CHANCELLOR.—If the words "si quis ex his," in the Charter were applicable to the then existing Fellows only, would you then contend that the 18th Victoria would extend to the present case?

Mr. Tandy.—I think it would; but I interpret the words "Reliquos omnes," &c., and "sed si quis ex his," from the 18th Victoria. That Statute or Letters Patent is, I submit, an authoritative declaration of what was the law, and all the Statutes or Letters Patent are incorporated together and form one code.

VICE-CHANCELLOR.—The Solicitor-General said that the words applied only to those Fellows who had been elected under the Charter of Elizabeth.

Mr. Tandy.—I hold that the words have reference to all future Fellows. The "Si quis ex his" follows after the words, "Reliquos omnes tam socios quam Scholares post præstitum hisce Statutis nostris juramentum," &c. I submit that the words, "Reliquos omnes," &c., commenced a new sentence and refer to future as well as then existing Fellows. The obligation to take the oath is imposed on the then existing Fellows by the Charter 13 Car. I., pages 16 and 17, and it is also to be taken by all future Fellows, as appears from the passage in page 17: "Visitatoribus vero Collegii potestatem et licentiam concedimus *pro hac vice* juramentum administrandi in hoc casu *post hanc vicem* vero eandem potestatem concedimus Præposito," &c.; and since the obligation of taking the oath was imposed upon all, both then present and future Fellows, why should the penalty, which is imposed for the refusal to take it, attach only upon the then existing Fellows? And if I am right in my argument, this being followed by the words, the words refer to all upon whom the obligation to take the oath was imposed by the previous part of the sentence.

VICE-CHANCELLOR.—Suppose we had to deal alone with the "Si quis ex his" in the Charter, and that the words were applicable only to the then existing Fellows, would you contend that what was done by the Letters Patent of the 18th Victoria would have the effect of extending them to the present case?

Mr. Tandy.—I think it would.

VICE-CHANCELLOR.—I had the question under consideration

myself. I once had it judicially, and I held that where a Statute proceeded upon a misconstruction of a former Statute, it had not the effect of a declaratory law, and did not oust the jurisdiction of the Court from putting upon the former Statute the right construction.

Mr. Tandy.—I do not know that it would oust the jurisdiction of the Court, but I think it would make it pause before it put a construction upon the former Statute that would be contradictory to the later Statute.

VICE-CHANCELLOR.—There is a case on the point in 16th East, *The University of Cambridge* v. *Bryer*, and a case in the Court of Exchequer, in 14th Mees. and Wels., *Ledsom* v. *Russell*, in which Baron Parke said that it was the duty of the Court to put the right construction on a Statute which had been misconstrued. There are also cases in which the Crown having proceeded upon a mistake, the proceedings were annulled.

Mr. Tandy.—My contention is, that the words "Si quis ex his" have reference to the *then existing* Fellows, and also to all future Fellows. The words have an application to the future as well as to the past. We must consider what would be the object of confining the words to the then existing Fellows. If the oath is to be imposed upon the future, as well as the present Fellows, what would be the object in confining the punishment for not taking the oath to the Fellows then existing?

VICE-CHANCELLOR.—The removal from College of a person who would not take the oath is intelligible as to then existing Fellows under the Charter of Elizabeth; they had been elected for a time, and the Crown was extending the period of enjoyment. The Scholars then held at sufferance, there was not any fixed period for their remaining in the College. There were a certain set of Fellows, who had nearly reached the end of their privilege; and the oath was employed as a test of their principles, and if it were not taken they were removed.

Mr. Tandy.—What occurs to me is, that the Letters Patent contemplated the oath as a test that the party was not a Roman Catholic, and it was assumed that any person who did not take that oath was a person who did not recognise the authority of the Crown; and it was insisted, that if any one refused to take the oath he should be removed from the College. I submit that the words "Reliquos omnes tam Socios quàm Scholares post præstitum hisce Statutis nostris juramentum, ex speciali gratiâ, omnibus in iisdem comprehensis privilegiis gaudere volumus," refer as well to the future as to the then existing Fellows, and that the words "Si quis ex his" also have reference to the "Reliquos omnes," and include the future Fellows, as

well as those who were then in being. At page 16 of the Charter of Charles, it is enacted that when the Statutes are published, all the Fellows shall take the oaths; and the words occur, "Visitatoribus vero Collegii potestatem et licentiam concedimus, pro hâc vice, juramentum administrandi in hoc casu, post hanc vicem vero," &c. The "Reliquos omnes" are to take the oath prescribed for the particular order, and the words refer not merely to the then existing Fellows and Scholars, but also includes the future Fellows and Scholars as they may be elected from time to time, and the provisions as to these existing Fellows terminate with the immediately preceding words, "Jus Societatis retineat." The Charter in page 16 declares, "Et idcirco volumus, et ulterius mandamus, ut statim post receptionem horum nostrorum Statutorum, Præpositus, Socii, et Scholares omnes dicti Collegii fidem dent de observandis hisce nostris Statutis, et solenniter in sacello, coram Visitatoribus Collegii a nobis in Statutis nostris et infra nominatis, unus quisque eorum juramentum in se recipiat, uti suo ordini præscriptum habetur in Statutis nostris; nisi quod in juramento Socii concedimus, pro hâc vice tantum, Sociis nunc existentibus, et beneficiatis juxta Statuta quæ hactenus obtinuerunt in Collegio ut illa clausula omittatur, 'profiteor me insuper nullum omnino ecclesiasticum beneficium jam possidere.' Visitatoribus vero Collegii potestatem et licentiam concedimus, pro hâc vice, juramentum administrandi in hoc casu, post hanc vicem vero, eandem potestatem concedimus Præposito, et Vice-Præposito Collegii cum ipse Præpositus juramentum in se recepturus sit, pro tempore existentibus, ut juramenta omnia et singula in Statutis nostris requisita et præscripta licite administrare et valeant et possint per præsentes." This provision clearly contemplates that the oaths prescribed in the Statutes should be administered at all future elections of Fellows and Scholars. It makes the Visitors to administer them "pro hâc vice," and makes the Provost and Vice-Provost to administer them "post hanc vicem," and it authorises the omission of one clause from the juramentum Socii—"Pro hâc vice tantum Sociis nunc existentibus et beneficiatis." It also secures by express words that the oaths shall be taken by all the then existing Fellows and Scholars. If the words "Reliquos omnes" are to be confined to the then existing Fellows, other than those whose Fellowship would have expired at the then next Comitia, why should the latter class be excluded from the proviso "post præstitum hisce Statutis nostris juramentum"—why should it not be a condition precedent to be fulfilled by them as well as by the residue? It is no answer to say that the condition was

imposed upon them by the Charter (p. 16), because that includes all the then existing Fellows and Scholars. The general scope and intention of the Charter and Letters Patent was, that the obligation of taking the oath should be imposed upon all Fellows, present and future; it was as essential that it should be imposed upon the one class as upon the other; and it is a true and sound principle of law, that "it is not the words of the law, but the internal sense of it that makes the law. The letter of the law is the body, the sense and reason of the law is the soul."—(See *Eyston* v. *Stud*, Plowd. 465.)

VICE-CHANCELLOR.—Supposing that your argument were correct, and that the words applied to future Fellows, do you consider the refusal to take the oath was such as would have the effect—ipso facto—of making the election void?

Mr. Tandy.—That is a subject upon which I do not know that it would be right for me to say much. I do not say that it would make the election void, but the Fellow could not be admitted. If I were to go strictly upon the words of the Statute, I think that the oath should be taken on the Trinity Tuesday. I think it possible that a construction might be, and has been, put upon Statutes, by which the party would have a reasonable time to consider the matter; at the same time, I doubt whether any but a reasonable time could be given.

VICE-CHANCELLOR.—But you must take all the circumstances into consideration, because Mr. Purser did not know until Trinity Monday that he had succeeded on the examination: and might it not be said that the refusal to take the oath then, so as to have a little breathing time to consider the matter, did not amount to a peremptory refusal? The refusal was qualified by the expressed wish to be allowed a little time.

Mr. Tandy.—I would not say that it amounted to a peremptory refusal, nor is there any absolute obligation, having regard to what has been laid down in the Queen's Charter, to take the oath upon a particular day, so as to render it illegal to allow the person who had been elected some further time. This would be a general and rational construction of the Act of Parliament.

Mr. Butt, Q. C.—My learned friend has been referring to something which passed before the Board. All I know is what is contained in the Petition and Answer; if what otherwise appears is to influence the decision of the Visitors, it should be made the subject of evidence.

VICE-CHANCELLOR.—Nothing which has not been agreed to by all shall be made use of by us; but if either party desires that we should inquire into any particular transaction, it will be our duty to do so.

Mr. Tandy.—I am not aware that I have referred to anything which is not contained in the printed Petition and Answer.

VICE-CHANCELLOR.—We cannot at present go beyond what appears on the paper, but we shall take care to inquire into anything material that either party shall desire.

Mr. Bewley.—May it please you, Sir Joseph Napier, and your Grace, I appear here with my friend, Mr. Jellett, for Mr. Purser, and I present the case in two aspects; first, in resisting the application of Mr. Minchin and Mr. Panton; secondly, upon his own behalf, claiming for him the right of admission to the Fellowship, having been elected on Trinity Monday. These matters are distinct, and the consideration of them will embrace certain principles. I propose briefly to call attention to the facts which have been agreed upon in the Petition and Answer. Mr. Purser was a candidate for the office of Fellow, the examination for which commenced on the 13th, and was concluded on the 25th of May. Prior to the election, took place what has been described in the Answer to the Board (refers to printed paper); the Board then proceeded to the election, pursuant to the Statute, and elected Mr. Purser to the vacant Fellowship; and the election was announced from the Chapel steps in the way in which it has been declared from time immemorial. On Trinity Monday, the 27th of May, the election was held, pursuant to the Statutes; Mr. Purser was elected to the first vacant Fellowship, Mr. M'Cay to the second; the result of the election was formally declared by the Provost. Here was Mr. Purser, who had obtained the prize for which he had been so long striving; it was within his grasp, he could have seized it, had he taken the declaration, and got possession of the Fellowship—a position so much coveted by all who desire collegiate honors—but a conscientious scruple stood in his way: it was not his intention to devote himself to Theology, or take Holy Orders. Was it unreasonable for him to ask the Board either to admit him then, or postpone the time when he would be required to take the declaration, to enable him to apply to get the Queen's Letter dispensing with the necessity of taking the declaration?

VICE-CHANCELLOR.—Was that the only objection which he had?

Mr. Bewley.—It was the principal objection.

VICE-CHANCELLOR.—He put his own construction upon the oath?

Mr. Bewley.—The oath was explained to him by those who thought they knew better than he did.

VICE-CHANCELLOR.—I remember that a similar instance

arose in the House of Lords; Lord Clancarty was the person to whom it occurred. He would not take the oath of supremacy; but having found that the authorised exposition was different from what he imagined it to be, and that his conscience was not in any way offended, he yielded to the advice of others, and obtained the privilege of which otherwise he would have been debarred.

Mr. Bewley.—That was the objection to the declaration which Mr. Purser felt; and we may respect his scruples of conscience, though we may think his construction of the declaration was wrong. It was not any singularity in, nor particular tenet of, his religion; it had nothing to do with the Moravian religion, but, as he said himself in his Answer, it was an objection that might exist in the instance of any religionist not a Moravian.

VICE-CHANCELLOR.—At the time he was asked to make the declaration he did not feel inclined to do so, because he laboured under a mistake as to its construction.

Mr. Bewley.—It is in terms an oath that the object of his studies would be Theology. He felt that he could not take it, and applied to the Board for a short time to enable him to get Queen's Letters to dispense with the necessity of taking it. There are many Fellows in the College who had obtained dispensations, and it was only reasonable that Mr. Purser should ask a similar favour. The case of the President of *Queen's College, Cambridge*, in "Grant on Corporations," p. 530, establishes the fact, that "the Crown may even grant a perpetual dispensation to empower the College to vary from the Statutes;" and, in the note is the passage: "The present President of Queen's College, Cambridge, holds his office, being a layman, by virtue of a dispensation granted by Lord Brougham, C., with the Statutes requiring the head to be in Holy Orders." By the Statute of Charles I., p. 16, the Crown reserved a right of altering any of the Statutes when it thought fit. Mr. Purser presented the memorial; it was taken into consideration, and, upon Tuesday, the 28th May, he attended Chapel, for the purpose of being admitted. The Provost called upon him to make the declaration which was substituted for the oath, and he stated that, for the present, he did not wish to do it: not that he had any doubt that his objection to take it was well founded, but to get time to apply for a dispensation. There are three propositions which I hope to establish; two of these would be enough to defeat the case of Mr. Minchin and Mr. Panton. The first is, that Mr. Purser was eligible as a candidate for Fellowship; the second, that he was duly elected to be a Fellow; and, if I establish

these two propositions, it will be sufficient for me to show that Mr. Minchin and Mr. Panton have not any *locus standi*, and have not any claim to be declared elected or have a fresh election. But there is a third proposition, that Mr. Purser is entitled to be admitted, notwithstanding this qualified refusal to take the oath. I pray the careful attention of the Visitors to this proposition, knowing how much Mr. Purser has at stake. As to the first proposition, was Mr. Purser eligible? It is a mistake to say that this involves the general question as to whether Dissenters are eligible. This is a particular case, and must be judged by its particular circumstances; it is the case of Mr. Purser, who professes the Moravian religion—a member of an ancient, Protestant, Episcopal Church; one who is in communion with the Church of Ireland, willing to conform to its services, and agreeing with that Church in all the leading doctrines of the Christian Faith; one who is willing to conform to the Liturgy of the Church, and has not any objection to attend its service. This is quite a different thing from the case of a Dissenter who would object to communicate with the members of the Irish Church, or attend the services of that Church. As to the individual religious opinions of Mr. Purser, I apprehend that the Visitors have not any intention to enter into them—there was not any imputation upon his private character. It was the duty of the electors to inquire into his moral character—this they did. But it has been urged by the Solicitor-General that you are to take into consideration the doctrines of the Moravian Church. I contend that this question is not to be considered in the present case. If it were open to me, I would be able to show that the Moravian was looked on as a sister Church by the Church of England—no small sect that has seceded from the Church of England, but, according to their own books and records, regarding themselves as a part of the Catholic Church—the one Universal Church of which Christ is the head; and more especially of the Protestant Church, whose doctrines are derived from the Holy Scriptures, and from them alone. This being the position of Mr. Purser, let us see how the Charters deal with the election of a Fellow. Your attention is called to page 4, the Charter of Elizabeth, where the only qualification is "idoneam personam," and at page 20 of the Charter of Charles, the qualification also is "idoneam personam." The Fellows are to elect a suitable, fit, and proper person. The qualifications of a Fellow are set out specifically at page 39 of Mac Donnell's book: "Volumus, et statuimus, ut in Socios ii solum cooptentur, de quorum religione doctrinâ et moribus tum Præpositus, tum Socii septem seniores, spem bonam animis conceperint, quique gradum Baccalaureatûs in Artibus jam susceperint." This is the first

thing—the candidate must have got a Bachelor's degree; and the Provost and Fellows are not to elect one who is "infamiâ notatus, de hæresi convictus aut moribus et vitæ consuetudine dissolutus." Having satisfied themselves on these grounds, the Provost and Fellows should be satisfied, and regard the candidate as eligible; but the Solicitor-General says that the Board must be of accord—all must agree *in bonam spem* as to his eligibility. There is nothing to indicate that they were not unanimous—it is to be hoped that they do agree. But how is the inquiry to be carried out? They say that they are not to elect any man to whom any one of the three objections can be raised. They have satisfied themselves upon these points, and no question can now arise. As to the question of Heresy you will not have any difficulty—Heresy as described by the Statute of Elizabeth, and not a sect divergent from the Church government. By the Letters Patent of Charles, pp. 91, 92, the Provost had power to convict of Heresy. If any one confessed, or was guilty of, Heresy, he might, after sentence by the Dean, be expelled. There is another matter to which your attention has been directed by Mr. Tandy. In the original Statute—*Bedell*—the word used was "suspected of Heresy." This has been altered to "convicted of Heresy."

VICE-CHANCELLOR.—The words are not convicted "by," but convicted "before," the Provost.

Mr. Bewley.—And I think, in those days the Provost exercised an arbitrary power. Candidates must send in to the Provost their names, and the names of the counties in which they were born; they should attend the requisite examination; but they were not required to send in any statement in reference to their religion. The only other provision is, that the candidate should make his solemn protest against Popery. If it were necessary, he should be a member of the Church of Ireland, or have subscribed to the Thirty-nine Articles; but it would be wholly useless that he should make the special declaration: and my argument is, that the College should be a Protestant institution rather than an institution of the Church of Ireland. No doubt, the services were to be those of the Church of Ireland; but those who renounced and hated Popery were equally admissible. You will remember that Mr. Jellett pointed out that by Statute law, 17th & 18th Chas. II., the Fellows were required to subscribe a declaration of conformity to the Liturgy of the Church of Ireland, while the Provost was compelled to subscribe the Thirty-Nine Articles; thus showing that it was not necessary for the Fellows to subscribe the Thirty-nine Articles, and that they might hold doctrines which were not in accordance with them, provided they attended Chapel, and discharged

the other duties imposed upon them. I shall now refer to pp. 146-47, to show the Protestant character of the College. Caput 1, Letter 1, Geo. III.: "De Professore in Sacra Theologia"—"in sacris literis, et religionis Christianæ doctrinis diligentius erudiantur, in quem precipuè finem fundatum fuit hoc Collegium." The College was founded, not for instruction in the principles of the Church of Ireland, but in the Holy Scriptures, and in the principles and faith of Christianity. This being the only qualification prescribed by the Statute prior to election, according to the provisions of the Charter of Charles, p. 96. Before going to the election, the electors are to read the Statutes—"De eorum qualitate, et electione unâ cum hoc capite (de forma et tempore electionum) nomina candidatorum publicè à primario lectore recitabuntur." I do not subscribe to the doctrine of the Solicitor-General that the Board are to go beyond the Statutes, and enter into a consideration of the form of faith which the candidate has professed—they are to regard the Statute—and if they have been satisfied upon the question as to his character and eligibility to be a candidate, they are so to declare. You will observe that up to the time of election, and until the election is complete, no religious test has been imposed upon the candidate—none whatever; the election is completed without any religious test. At p. 97 the oath of the elector is given: "Ego Deum testor in conscientiâ meâ me Statuta nuper lecta fidelitér," &c. What is it that the voters are to determine? They are to decide who has been elected, and he is to be declared "elected" by the Provost. This was done. The Solicitor-General has referred to a great many cases upon private charities and trusts. I do not adopt the doctrine laid down by him, but I say that the cases have not any application to the present case. If a question arose as to the form of worship in the Chapel, it is manifest that it must be according to the English Liturgy, prescribed by the Statutes; but no such question arises here. Mr. Purser is willing to conform to the Liturgy. The cases cited as to private foundations have not any application to this case. Even the case of *The Chelmsford Grammar School* (1 K. & J., 547, 565) has not any reference to this case. There it is decided that a provision may be made, dispensing with the Liturgy, and allowing other pupils to have the benefit of the foundation. The next argument of the Solicitor-General, as to Protestant Dissenters, that I propose to notice is, that which is founded upon the Letters Patent of 18th Victoria, Vol. 2, pp. 104-105 (Roman Catholics were now admitted to take degrees, and Protestant Dissenters to have the same privileges as Roman Catholics with respect to admission and graduation). By the Letters of 33rd

Geo. III., ch. 21, sec. 13, all persons taking degrees had to take the oaths of allegiance, supremacy, and abjuration, and to subscribe a declaration against Transubstantiation. This is the Statute, the recital of which is as follows:—"Whereas it may be expedient, in case His Majesty, &c., shall be pleased so to alter the Statutes of the College, &c., as to enable persons professing the Roman Catholic religion to enter into or to take degrees in the said University, to remove any obstacle which now exists by law, &c." This was followed by the Letters Patent, which were prospective, "in case His Majesty should think fit." He did think fit, and oaths were dispensed with, so far as Roman Catholics were concerned; but, notwithstanding this, the Dissenters had to take an oath against Transubstantiation, and also the oath of supremacy. It was considered unjust to impose on them oaths that had not been required from Roman Catholics.

VICE-CHANCELLOR.—They did not create any difficulty about the oaths; it was in reference to the discipline in the College.

Mr. Bewley.—It refers to the Statute, which dealt only with the question of oaths; it is sufficient for my purpose to show it does not follow that, prior to that, no Dissenter could take a degree. Any Dissenter could take a degree before the Letters Patent of the 18th Vict., provided he took the oath. This will dispose of the first branch of my argument; and I think you will come to the conclusion that Mr. Purser was eligible—not that all who profess the *Moravian* religion were eligible, but that Mr. Purser was eligible. The fact of his declining to take the declaration was immaterial, so far as the election on Trinity Monday was concerned. I admit that he must not only be elected, but admitted, before he can enjoy the Fellowship; but I shall establish that he was duly and formally admitted upon Trinity Monday. The necessary forms were gone through, he was elected by a majority of the electoral body, and if he had died on the night of Trinity Monday, the Board would not have had any power to order that a fresh election should take place. If I fail in my third branch of argument, it is important for Mr. Purser to establish that there is a vacancy. We do not know what may occur between this and next Trinity Monday. A Statute or Letters Patent may put him in a different position from that in which he would be placed were the vacancy to be filled up. According to Mr. Tandy, an election for Fellows might be held within two months. Originally, by the Charter of 34th Elizabeth, p. 5, the election might be held at any time within two months after the vacancy—"Infra duos menses proxime post sequentes, et sic, de tempore in tempus, toties quoties mors, decessus, resignatio, vel deprivatio conti-

gerit." No matter how the vacancy occurred, under the Statute of Elizabeth, by death or any other cause, there was full power to elect within two months. This was altered by the Charter of Charles. At pages 19-20 an alteration is made in the time, and I refer you to pages 39, 85, and 98; at p. 98 the time of election is fixed:—"Diem vero electionis Sociorum Juniorum, ac Discipulorum assignamus quotannis diem Lunæ post Dominicam Trinitatis, nisi contigerit tunc temporis Præposituram vacare." The only case in which there is no power given to defer the election is during a vacancy in the Provostship. You have been referred to the Letters Patent of 60 Geo. III., p. 277. The words here are negative; though the Board could alter other College hours, here is an express exception that it should not extend to Fellows. The 3rd of Wm. IV., p. 291, which was not referred to by Mr. Tandy, gives the Provost and Senior Fellows power to change the hours, but the exception was not to extend beyond that contained in the words, "exceptis solummodo" temporibus examinatiorium et electionum Sociorum et Scholarium discipulorum." It gave them power to alter the hours for morning service in the Chapel, but still kept within the exception the important duty of the examination.

VICE-CHANCELLOR.—The Solicitor-General did not insist that there should be a new election, but that the election was void, by reason of the original disqualification.

Mr. Bewley.—He did not give up the point; and if Mr. Butt will abandon it, I need not proceed further with this branch of this case.

Mr. Butt.—What I understood we were prepared to argue was this:—If the Fellowship were full, there is no doubt there is a vacancy, and the election must take place next Trinity Monday; but if it be not full, by reason of its being void, or the refusal on the part of Mr. Purser to take the oath has prevented its being filled up, it is not full, and it ought to be filled up.

VICE-CHANCELLOR.—Do you contend that what occurred on the Tuesday amounted to a refusal to take the declaration? Do you contend that till the election was complete by admission, the vacancy was not filled up.

Mr. Butt.—Precisely, and that you are to proceed to a new election. There cannot be a vacancy unless the office is not full. It will turn upon that; and I think it was the proposition of the Solicitor-General.

Mr. Bewley.—(Refers to "Grant upon Corporations," p. 213, note 2.) There it is laid down that where the constitution of the corporation appoints a day for the election to an annual office, there

cannot be at Common Law an election on any other day, and it is necessary to get an Act of Parliament to change the day. Where a day has been fixed by Charter or Letters Patent, there is not any power to hold the election upon any other day; and even although Mr. Purser might not have derived the full rights by admission, there was not any power in the Board to hold an election upon a subsequent day. The question arose whether a new candidate can come forward upon a second day. I contend that the Visitors have not any power to direct a fresh election. The powers of the Visitors will be found at pages 105, 250, and 294. I do not dispute the authority of the Visitors to inquire into all these things.

VICE-CHANCELLOR.—The powers of the Visitors have been stated in an elaborate judgment of Chief Justice Pennefather in *Mr. Heron's case* (Report of case by Mac Donnell and Hancock, p. 12).

Mr. Bewley.—You will perceive that special duties and powers have been entrusted to the Visitors (p. 105). They are allowed to do every thing that is necessary for the reformation of abuses, even to the extent of depriving the Provost of his office, provided always that nothing is to be done without consulting the Chancellor of the University. I merely mention these things to show that the Visitors may remove a Fellow from his office, but no power has been given to them to declare a fresh election in such a case as this. My third proposition is, that Mr. Purser is still entitled to be admitted. This can be argued in either of two ways: either that a forfeiture has not been created by a refusal to make the declaration, or what did take place was not a case of forfeiture.

VICE-CHANCELLOR.—This was almost admitted by Mr. Tandy.

Mr. Bewley.—Mr. Butt will not admit anything. My contention is, that before the full rights can be enjoyed by a Fellow, he must not only be elected but admitted. I have already referred to the Charter of Elizabeth—to the words "eligere, nominare et constituere"—and I submit that the word "constituere" is not "admission," but that the three amount to acts which must be done upon Trinity Monday. The words of the Statute of Elizabeth are, that if any vacancy shall take place, the Provost and Senior Fellows are to elect, nominate, and constitute a successor, and the Statute of Charles, following up that, provides that the Provost and Senior Fellows shall elect a suitable person to fill the office. All these acts are to be done upon the one day, and on Trinity Monday the power of election was exhausted and at an end. Though he was elected upon that day, he had only

an inchoate right to the enjoyment of the profits of his office, as was pointed out in the case of *The Queen's College, Cambridge* (Jacob's Report, p. 39). The taking an oath or declaration must be subsequent to admission to Fellowship. The admission is essential, and this will likewise be seen at p. 148, in reference to a Professor of Divinity.

VICE-CHANCELLOR.—He is not entitled to enjoy the profits of the office until he has been admitted.

Mr. Bewley.—The Professor of Feudal Laws must be admitted before he can receive the emoluments. The important question is, a condition precedent to the election, or a subsequent proceeding to admission. This may be arrived at either by express words or by implication. I mean to contend that the oath should have been administered after the admission of the Fellow. Confessedly there is not anything in the original Statutes of Charles, one way or the other. We find the oath given without anything said as to the time at which it is to be taken.

VICE-CHANCELLOR.—It is to be administered upon election. Election precedes admission.

Mr. Bewley.—I contend (it is only one branch of my argument, but even assuming that I am wrong, I contend) that refusal to take the declaration does not disentitle Mr. Purser to the office. The Statutes do not prescribe that the declaration is to be taken before the admission. The subsequent Statute uses the loose words, "upon election," meaning either before or after the election. The word "election" is properly used as meaning election and admission together. In the case of *The Queen's College, Cambridge* (Jacob's Report), "the Juramentum Socii" is described. The taking the oath may be a condition precedent or a condition subsequent. It is clear that till the oath has been taken the candidate cannot be admitted. There are cases under the Statutes and Letters Patent in which taking the oath was made a condition precedent, in the case of a Professor of Feudal Law, p. 150 ; and in the same manner, on reference to a Professorship of Divinity, p. 270. I use this merely to show that when it was thought fit to prescribe when the oath should be taken, it was done ; and by the Letters Patent of 60th Geo. III., power was given, with the consent of the Visitors, to alter anything except the days of examination and election. It was competent for them, with the consent of the Visitors, to alter the time of admission. The way in which I argue, independently of the silence of the Statutes, that the oath should be taken subsequently, is this—the provision in reference to admission is contained in page 41—"Prostridiè diei electionis, horâ octavâ matutinâ publicè in sacello Collegii, in præsentiâ omnium Sociorum

domi præsentium, et ut intersint monitorum, omnes electi admittantur in plenum jus Juniorum Sociorum, et deincèps percipiant ex commoda, et fructus, qui hujus modi Sociis ex Statutis præscribuntur."

VICE-CHANCELLOR.—They have a right to be admitted on making the declaration.

Mr. Bewley.—And until they have been admitted they do not receive the *plenum jus;* up to that period they have only an inchoate right, and the *jus Socii* is not theirs. I refer you to the words, "Quod si quis ex his sive Socius, sive Scholaris fuerit;" and it will be for me to contend that this applies to all present and future Scholars and Fellows, as well those existing as those who are to come after. In order to be a *Socius*, he must not only have been elected but admitted. I submit, therefore, that he must not only have been elected but admitted into his full rights of Fellowship. I do not base my argument upon this merely; but turning to the Supplementary Statute, the 18th Victoria, I find it is enacted that if any Fellow or Scholar shall refuse to take the oath he shall be removed. Before he lost the *jus Sociorum*, by refusing to take the oath, he must have got the right by admission. The Statute plainly shows that if he refuse to take the oath, he must lose the right; and before he lose a right, it is a logical conclusion that he must have had it; and having taken the oath and obtained the *jus Sociorum*, he is to retain the right if he perform the duties prescribed during his natural life. If he had not taken the oath he could not retain the right. This shows that the condition precedent prescribed by the Statute was not to be fulfilled till after admission. I could refer to several Acts of Parliament relative to tests and oaths, in which it appears that the admission was the thing first done, and the oath was administered afterwards.

VICE CHANCELLOR.—No doubt, but the election is there made void, unless the oath has been taken; the Statute enacts that if this has not been done, the election is void.

Mr. Bewley.—And here, if he refuse to take the oath after admission. The provisions of the Charters are the same as the provisions of these Statutes, and the office is vacated in consequence of the refusal (1 Anne, c. 17, s. 5), an English Act, adopted in Yelverton's Act (Irish). By it the oath of abjuration is to be taken by the Fellow in the next Term after his admission.

VICE-CHANCELLOR.—The provisions of those Statutes are peculiar; they avoid the election, but here you fall back upon the Statutes of the College and the Common Law. The oath is partly a test of opinion, partly an oath of office, and the Letters

Patent of Victoria show that the election was to be followed by the ceremony of taking the oath. Would it not be throwing over the taking of the oath upon election if he might come in at any time after he was admitted and take it?

Mr. Bewley.—He should come in within a reasonable time, and if he refuse to take the oath the office is vacated—he loses the right which he must have obtained in order to lose it.

VICE-CHANCELLOR.—He had the *jus ad rem*, though not the *plenum jus*. He had an inchoate right, and it may be contended that he could perform the duties, though he could not derive any benefit from it, because he had not clothed himself with the *plenum jus*.

Mr. Bewley.—He had a material interest in taking the declaration, as thereupon the office belonged to him. I have cited these cases to show that oaths of this description may be held as having been taken after admission, and also to show in one case, even in reference to the Fellows of this University, there were oaths to be taken. By the 1st of Geo. I., s. 2, c. 13 (England), the head and all other members of Colleges shall take oaths of allegiance, abjuration, and supremacy, at any time within six calendar months after they shall be admitted. A person refusing to take the oath of office is incapable of enjoying the office, and it shall be declared void. It is a reasonable thing that the oath should be taken after admission; and if they rely upon the passage in the Letters Patent of the 18th Victoria, it is penal, and must be construed strictly. I do not raise the point that it was a declaration and not an oath. The refusal was merely in the nature of a wish expressed that there might be a postponement, and Mr. Purser merely required a reasonable time before he took the final step of pledging himself to the declaration.

ARCHBISHOP OF DUBLIN.—I wish to ask whether any dispensation from taking an oath has ever been granted?

Mr. Bewley.—There have been dispensations from taking Holy Orders, but the same authority that can relieve a person from taking Orders may relieve from the necessity of taking an oath.

ARCHBISHOP OF DUBLIN.—My only object in putting the question was to ascertain whether such a dispensation as I have mentioned had ever been granted.

THE VICE-CHANCELLOR here referred to the Oaths Act, 31 & 32 Vict., c. 72, part 2, sec. 12, for the purpose of showing that any two of the Corporation, with the consent of the majority, might have made an application to one of her Majesty's principal Secretaries of State, if there were anything in the declaration that was obsolete or embarrassing, to have it omitted.

Mr. Bewley submitted, in conclusion, that the office was still

open; that the election could not be regarded as void, and Mr. Purser was entitled to it.

Mr. Butt, Q. C., M. P.—May it please you, Sir Joseph Napier, and your Grace my Lord Archbishop, it is my duty to reply on behalf of Mr. Minchin. There are two questions entirely distinct which have been submitted to the Visitors. The first of these questions is, assuming that Mr. Purser was duly elected, did he refuse to make the declaration? This is a matter of fact, upon which, if anything turn, there must be an inquiry. Supposing he refused to take the declaration, we must consider what is the legal consequence. Secondly, was he ineligible upon Trinity Monday, and was the election void on the ground of his ineligibility. The second question is the most important, because I cannot see how you can avoid raising the broad question that all Dissenters from the Church of England are eligible as Fellows, provided they take the oath. I shall say a few words upon the first question, that is, assuming Mr. Purser to be eligible and duly elected, and when called upon to make the declaration he said he would not make it. Before these questions are determined, we must consider the inquisitorial powers over this Corporation possessed by the Visitors. There are two jurisdictions—that of the Court of Chancery upon information filed, to prevent them from abusing any of the trusts reposed in them, and also the Common Law jurisdiction of the Queen's Bench, to compel an election by *Mandamus*—both of which jurisdictions are centred in this Court, and thus they are enabled to correct any abuse of trust which the Fellows of the College may have committed. Whatever power the Queen's Bench has to avoid an election by a *Quo Warranto*, or to direct a new election by *Mandamus*, you possess; but you have a further power, because you are a domestic tribunal, almost, nay entirely, entitled to put yourself in place of the Board, and do, if you think there has been any violation of duty, what you think, in right and justice, should have been done by them. It is important to bear this in mind in reference to both points. Supposing he was duly elected, and declined to take the declaration, what is the consequence? It is said that there is a vacancy, and that it cannot be filled up till next year: let us examine how the law stands upon that point. There is no doubt that an election, when fixed by Statute for a particular day, cannot take place except upon that day; but the Queen's Bench may, at Common Law, exercise its authority in every case in which an election should have taken place on a particular day, and the day was allowed to pass, and that Court may grant a *Mandamus*, and direct a new election. This power is essential to the preservation and the very existence of a Cor-

poration. There might be a case in which a Mayor or so many Aldermen formed an essential part of the Corporation, and if they did not elect on the particular day named in their Charter, the Corporation itself might cease to exist, unless the Queen's Bench interposed, and directed them to elect on another day. It is every year's practice, when the right day has lapsed, to issue a *Mandamus*, directing the holding of the election on another day. My first contention is, the Fellowship is not full till the declaration has been taken. I do not think the Fellow could discharge the duties, or the Board fulfil their trust, unless he had first taken the oath, because it has reference to the due fulfilment of his duty, and no man should be placed in a position as teacher who had not pledged his oath or made a declaration binding on his conscience that he would duly discharge his duty. Again, to allow a man to do his duty and deprive him of the emoluments would be to frustrate the whole object of the founder; and if any person desired to bring a Dissenter into the Institution, to tell him, on being elected a Fellow, not to take the oath and they would supply him with the emoluments, the whole object of the Statutes might thus be defeated; therefore the oath is a necessary condition precedent. The Charter of Elizabeth prescribed no oath, but left to the Provost and Senior Fellows the power of making Statutes. So far as I can ascertain, that power was never exercised till 1628, when Bishop Bedell framed his Statutes in accordance with the power prescribed by the Charter of Elizabeth. I have been inspecting, within the last half hour, collections of manuscript Statutes in this College, framed by Bishop Bedell, and signed by himself. These Statutes prescribe the oaths of the Fellows and Scholars, which were nearly or exactly the same as they are now. Then comes the Charter of Charles the First. There are two things which Charles the First did. He gave a Charter to the College which they might have rejected, because they had the power, by the old Charter of Elizabeth, of making Statutes of their own. The King had no right to take the power from them, therefore he issued a Charter to the College, which they accepted. The first mention of the oath takes place in this Charter; the amended code is referred to at p. 16; the power of framing Statutes, exercised by the Provost and Fellows, is, with their consent, revoked, and reserved to the Crown. He could not have retracted the power, except upon the acceptance of the Charter by the College. The Charter goes on to say—"Quoniam vero nulla Societas absque Statutis pro eâdem piè et fideliter gubernandâ diu consistere possit, ... omnino ecclesiasticum beneficium jam possidere." This is the foundation of the present con-

stitution of the College: they then gave up the power of making laws for themselves, consented to a revocation of their Statutes, and accepted the Charter of Charles, which is dated in 1638, nine years after Bedell's Statutes. Whether all the Fellows and Scholars who existed at the time had taken the oath under the Statute I do not know, but "on the receipt of this Charter they were all bound and commanded solemnly to take the oath in the Chapel of the College in the presence of the Visitors;" afterwards the oath was to be taken before the Provost or Vice-Provost. Thus by this Charter power was given and the duty imposed of administering the oath therein prescribed to the Visitors in the case of Fellows; to the Provost or Vice-Provost in the case of Fellows subsequently elected. At page 41 it is enacted that the Fellowships which were held for seven years, under the Charter of Elizabeth, should be held for life, except in the case of those of the then existing Fellows who would have completed their period of seven years at the next Commencements; all the rest were bound to take the oath prescribed by this Charter; but if any of these, i. e. *the then existing Fellows*, refused to take this oath, he was forthwith to be removed from College. There is a gross blunder in the recital of this proviso in the 5th section of the Letter of the 18th Victoria, as if the "Reliquos omnes" were applicable to all Fellows *subsequently elected.* There was clearly no intention in the 18th of Victoria of creating any new disability. This misrecital could not, even in the case of a Statute, put a construction upon the original, and *a fortiori* in the case of a King's Letter; the letter would not bind a Court of Law in the way in which an Act of Parliament would. This appears to be the distinction between a King's Letter and an Act. The oath—upon all the principles of the Common Law—if not part of the admission to the office of Fellow, clearly precedes it.

The right construction of the Letter of the Queen is, that it is a mitigated Statute: it says that the punishment under the old Statute is too severe, and it should be mitigated. The Statute was absolute, but no new disability was created. The oath was to be administered to all existing Fellows and Scholars, probably in consequence of the laxity of rule in the College. We may put this out of the case; it has not much to do with the question, nor does it affect my case, whatever view the Visitors may take. The oath is clear upon all the principles of Common Law: if not a part of admission, it is a preliminary to admission. This is applicable to an eleemosynary as well as a lay Corporation. I cannot accede to the arguments of Mr. Bewley, that the electors could admit a man without having

first taken the oath: the oath upon admission is regarded as an important preliminary in the case of any corporate officer. I remember well when I obtained Scholarship, I was not a member of the Corporation till I was admitted, before which admission I took the oath; I knelt down before the Provost, he took my hands in his, and said, "I admit you a Scholar of this College." I was not a member of the Corporation until that was done, and when it was done I was *ipso facto* admitted. There could not be a *Mandamus* to admit another in my place—there should be a *Quo Warranto* to remove me; because I was admitted on taking the oath, and unless there were circumstances that rendered my election void, I could not be removed.

VICE-CHANCELLOR.—Have you a case to show that where the oath has not been taken the election is vitiated?

Mr. Butt.—No, I have not. The first thing is the election; the second, admission: the office is not full till admission takes place; it is the admission which makes the office full. If, owing to the default of the electors, the Board cannot fill up the vacancy upon the Trinity Tuesday, is the office to remain unfilled?

VICE-CHANCELLOR.—Is there any authority, at Common Law or otherwise, where there has not been any default or mistake on the part of Electors—no malversation—the Court of Queen's Bench has interfered and ordered a new election?

Mr. Butt.—It is not necessary for me to consider this. The whole law upon the matter may be found in the case, in 1st East, 79 (*Rex* v. *Corporation of Bedford*). An application was made in that case for a *Mandamus* to elect a Mayor. The difficulty arose in this way—the Mayor had refused on election to take the oath, and the Court expressed great doubt that they could compel him. It appeared that Mr. Green had been duly elected, and the office was full; he was indictable for the refusal, but the Court thought it better to allow the election of another Mayor to take place.

VICE-CHANCELLOR.—If a man refuse to take the oath of a public office it is an indictable offence, and he may be punished at Common Law.

Mr. Butt.—I can test that principle in this case, by asking you whether Mr. Purser could be indicted?

VICE-CHANCELLOR.—No.

Mr. Butt.—Then we must apply different principles to this case. Was it, let me ask, the intention of the framer of the Statutes that the vacant place of the Fellow should be filled up in *plenum jus* upon the ensuing Trinity Tuesday? It was that, upon the ensuing Trinity Tuesday after the vacancy, there should be a Fellow qualified to receive the emoluments and dis-

charge the duty of his Fellowship, and if the Court and Board can carry out this intention, they should do so.

VICE-CHANCELLOR.—The question in this peculiar case is, whether we can treat what Mr. Purser has done as a peremptory refusal, so as to visit him with a forfeiture.

Mr. Butt.—If I were to follow the principles laid down in the case of *The King* v. *The Corporation of Bedford*, which I would have power to do, Mr. Purser at Common Law might be amenable to your censure or to indictment.

VICE-CHANCELLOR.—He might be subject to some interference on the part of the authorities if he held on his post, without putting himself in a position to discharge his duties. There are cases in which fines have been imposed or a slight imprisonment inflicted, to make persons take the oath of office. In those cases the man was punishable for not having qualified himself, but I have not found any case in which the refusal to take the oath has been treated as an avoidance of the election, without express words to that effect.

Mr Butt.—You should not allow the College to be deficient in its proper number of Fellows for the year—you should exercise all your powers at Common Law, and which you in this tribunal possess, to attain this end. Do it consistently with law, but you are bound to exercise your powers. It is plain that the filling up of the Fellowship is quite as much a requirement of the Statutes as the examination of candidates or the proclamation of the election.

VICE-CHANCELLOR.—Do you say that the Fellows had discharged their duty on the Monday, and that the admittance of Mr. Purser on the Tuesday was not necessary?

Mr. Butt.—I do not. The contention between my learned friends and myself is—they say Mr. Purser's refusal upon the Tuesday to make the declaration, which prevented his admission, vacates his Fellowship. I contend that it is within your power as Visitors to bring him before you and ask him is he prepared *now* to make the declaration. With great respect, the duty of the Board had not been fully discharged when they elected him —it was their duty to fill up the Fellowship, and the consummation of all was the admission.

VICE-CHANCELLOR.—You yourself say that it could not be done till he took the oath.

Mr. Butt.—And he refused It is like the case of a Corporation, and the Queen's Bench will, on the ground of the miscarriage of an election, grant a *mandamus*. It is plain that according to the Statutes and Charters, it was intended that there should be a number of Fellows, and that the vacancy should be ac-

tually and really filled up, not like the case of a Cardinal *in petto*, to be brought out when he chooses to take the oath.

VICE-CHANCELLOR.—Is he to be allowed a reasonable time for consideration?

Mr. Butt—That I think is a matter for the deliberation of this Court. If you think that he has not had a reasonable time, you have a power beyond that of the Queen's Bench; you can, as a domestic tribunal, call him before you, and ask him whether he requires more time for consideration, and adjourn the Visitation. You can thus ascertain whether his refusal has been peremptory, or he has a fair excuse for seeking for more time; but do not understand me as agreeing to the monstrous proposition that he can take the oath at any time he pleases—that he, not intending to take the oath, may come into this College, turn the Statutes into a mockery, and seek to be admitted to an office which he is not prepared to fill—disappoint his competitor, who has a right to the place, if he will not fill it, and frustrate the law.

VICE-CHANCELLOR.—Can he apply to the Secretary of State, under the provisions of the 31 & 32 Vict., c. 72?

Mr. Butt.—Are you to suspend the Statutes of the College, and send to the Secretary of State to dispense with them in his favour?

VICE-CHANCELLOR.—He is elected upon the Monday, and knows that this is to be followed up by a declaration on the Tuesday, but the law provides for the removal of what is objectionable or inconvenient.

Mr. Butt.—Allow me to look at the Act of Parliament. I have been commenting on the proposition that Mr. Purser should apply for a Queen's Letter [refers to the 31 & 32 Vict., c. 72]. I do not think that it at all applies to an oath like the oath in the present case.

VICE-CHANCELLOR—It is the clause in which the oath has been converted into a declaration.

Mr. Butt.—The meeting spoken of in the Act is one at which the Scholars should be present. Where is the authority to do this? Does it say that the oath is to be explained? If Mr. Purser was bound to take the oath when he was elected, it would be setting the law at defiance, and overruling it, if a Secretary of State could have the power to dispense with it.

VICE-CHANCELLOR.—The passage I think is quite plain.

Mr. Butt.—I submit that you should hear evidence upon the point on which his objection to the declaration turned.

VICE-CHANCELLOR.—A peremptory refusal was never perhaps expressly given to the Board.

Mr. Butt.—No Court can decide without hearing evidence.

Mr. Bewley.—I submit that it would be extremely inconvenient to raise a new question

VICE-CHANCELLOR.—We will not allow any new evidence to be given, except that if anything material requires consideration, the Visitors will have the facts ascertained.

Mr. Butt.—The passage in the oath to which he objected was connected with the authority of Holy Scriptures. Are not the Visitors bound by the rules of law?

VICE-CHANCELLOR.—They are bound to see that there has not been any unreasonable delay in making the declaration.

Mr. Butt.—When I appeal to the Fellows on this domestic tribunal, and tell you that his objection was not to taking Holy Orders, but to the authority of Holy Scriptures, will you decide without inquiry?

VICE-CHANCELLOR.—I have not any right to assume it, nor do I believe it.

Mr. Butt.—It is a question of vital importance to this College and to the interests of religion. I do not think that this case should be decided in the dark; your duty is to inquire and satisfy your consciences, and I say that the ground urged by Mr. Purser against taking the declaration was as I have stated.

VICE-CHANCELLOR.—He says in his Answer, that his conscientious objections to the oath or declaration prescribed by the said Statutes were not due to any peculiar doctrines or tenets of the Church to which he belongs, but might, in his opinion, exist equally in all cases where a person elected to a Fellowship in the said College had no intention or desire to devote himself to the study of Theology or to enter Holy Orders. He also said it was his intention to apply to the Queen to relieve him by Royal Letter from the necessity of taking the oath.

Mr. Butt.—Surely you should take his opinion and views, and not his statement merely. Call him before you and put the question to him. Theology does not change every hour: the Protestant religion is not obsolete. Why not examine him?

VICE-CHANCELLOR.—The question is whether, under the circumstances of his peculiar case, he should not be allowed a reasonable time for consideration.

Mr. Butt.—I am replying to what has been said—that the Board should wait for a meeting of Scholars and Fellows, which meeting could not be called. The Act does not apply to the case at all. I repeat that you are not to allow him to apply to the Secretary of State, on the ground that he can be absolved from the declaration, not one line of which can be said to be obsolete.

VICE-CHANCELLOR.—He should have a reasonable time to consider his course.

Mr. Butt.—For what period is this to be? Who is to determine the question if the Court is not; and is not this tantamount to postponing justice for ever? I have been arguing that there was not any necessity for the postponement. He should have beforehand considered the oath and known that he could take it; and it was a monstrous proposition for a man to say, "I am a candidate, I know the oath should be taken, yet I will disarrange the whole proceedings, disappoint my competitors, and ask this tribunal to postpone the taking of this oath." For what purpose, let me ask, is this postponement to take place? The Statute says that it is to be done on Trinity Tuesday. Why not do this? He does not give any reason for it, that under the Statute can be held to be good. You surely cannot suppose that a Secretary of State could change the Statutes of the University? But he puts it upon this ground, that after the election, and before admission, he wished to apply for a dispensary letter from the Queen. I do not think that letters of a King or Queen have ever been given to dispense with an oath. Letters of dispensation have been given to grant the privilege of not going into Holy Orders, or not requiring the Provost to be in Holy Orders, but they never have been granted in such a case as the present. Mr. Purser should have been ready to take the oath upon Trinity Tuesday. You should call him before you, and ask him whether he is willing to take the oath; but if he refuse, you should direct the Board to proceed to a new election, and call upon them to do that which had not been done on the Trinity Tuesday—consummate the election.

A short interval having elapsed, on the return of the Court to the Hall,

THE VICE-CHANCELLOR said—I have made some inquiry on the point to which you adverted, and have ascertained that Mr. Purser at first supposed that the clause about acknowledging the authority of Scripture bound him to admit the verbal inspiration of Scriptures, but this matter was explained to him, and I take it for granted that the explanation satisfied him, because the memorial is confined to his objections to devote himself to Theology or take Holy Orders. This is the difficulty which he experienced, and of course it is desirable to overcome that difficulty so far as it can be lawfully managed.

Mr. Bewley.—I have authority from Mr. Purser to say, in the most emphatic terms, that he did not deny the authority of

Scripture, and such a statement never should have been made without evidence to sustain it.

Mr. Butt.—I did not make any such statement, but I did make a statement, which is perfectly true, that he objected to the part of the oath to which I referred. He objected to iton the ground that it conveyed to him an idea in reference to "verbal inspiration," which he could not agree to. There are some who hold office in this College who would not take the oath if this interpretation were to be given to it; but I must repeat, I was quite justified in making the statement. His objection, as I understand, and which he communicated to the Board before the election, was grounded upon the passage relating to the supreme authority of Holy Scriptures.

Mr. Bewley.—The passage to which Mr. Purser objected is not "Sacræ Scripturæ auctoritatem in religione summam agnoscere," but that which follows—"quæcunque in sancto Dei Verbo continentur, verè et ex animo credere."

Vice-Chancellor.—The truth is, he was involved in difficulty and embarrassment, as I have already said Lord Clancarty was. He put his own interpretation upon the matter, and became entangled in the web of his doubts, and would not act otherwise than he at first conceived he should, until he was convinced that it was his duty to act in the sense in which the oath was imposed by the Legislature.

Mr. Butt.—We might conduct this investigation upon admission, but I was justified in saying that he did object to the passage, "Me, sacræ Scripturæ auctoritatem in religione summam agnoscere." I can conceive—and I should be sorry for myself if I could not—that a person having a sincere belief in the authority of Holy Scriptures, as the foundation of our immortal hopes, would object to take an oath that involved such a question as the verbal interpretation of Scriptures. The Board elected Mr. Purser with the full knowledge that he declined to take the oath.

Mr. Tandy.—That cannot be admitted.

Vice-Chancellor—It is not a case in which the Board would prematurely or unadvisedly arrive at the conclusion that he could not conscientiously take the oath.

Mr. Butt.—Yes; and also that Mr. Purser himself told them before the election that he could not take it.

Vice-Chancellor.—That would depend upon what he stated; there are tests of opinion which the Board might apply, but if he merely intimated a difficulty, that might be removed.

Mr. Butt.—But would it not be proper that this should be established by some sort of legal evidence?

VICE-CHANCELLOR.—If the question becomes material, it might be so decided, but my present opinion is that he had a difficulty, which grew out of his own interpretation; and I cannot say that the Board came to the conclusion that ultimately, if the matter were properly explained to him, the difficulty would remain.

Mr. Butt.—It is for the Visitors to say whether they shall have further information; it is a case that should not be decided by mere technicality. You are here to keep the College right in this important matter.

VICE-CHANCELLOR.—I do not believe that any one of the Board conceived that he would have found in this an insurmountable difficulty.

Mr. Butt.—I am assured by some of them that he appeared in the Board-room before the election, and stated to them that he could not take the declaration. It might have been an unreasonable interpretation of the oath, as indisputably some thought Lord Clancarty's to be; but I say if he made the objection, they should not elect him.

VICE-CHANCELLOR.—If they deliberately concluded that he could not conscientiously take the declaration, if they knew he had opinions of a nature that must stand in the way of his taking it, that might justify the Board in not electing him.

Mr. Butt.— My argument is, that a Dissenter of the Church of Ireland could not conscientiously take the declaration.

VICE-CHANCELLOR.—A man who was not a member?

Mr. Butt.—That involves a difficulty. If you ask me what constitutes a membership of the Church of Ireland, I cannot tell it, neither can I define what makes a member of the Church of England, nor the Presbyterian Church.

VICE-CHANCELLOR.—It is a rule of law that before you can punish or disable, the enactment must be definite and clear.

Mr. Butt.—It is not an arbitrary law of disqualification out of qualification. Nobody can be elected to a Fellowship consistent with the trusts of the College who is not a member of the Church of Ireland.

VICE-CHANCELLOR.—What is a member?

Mr. Butt.—I cannot tell; I can tell what is not. If the difficulty of defining what is a member of the Church of Ireland prevents the enforcement of the trusts, what becomes of all the cases that decide that a schoolmaster must be a member of the Church of the founders of the school?

VICE-CHANCELLOR.—There was a case before the Master of

the Rolls in England; he ruled that though, generally speaking, where there was a Church of England foundation and instruction, and it might be proper, and tend to insure the due performances of the duties, yet there was not any rule of law to make it a breach of trust in itself to appoint a Dissenter. That is the case of *The Attorney-General* v. *Clifton* (32 Beav., 396).

Mr. Butt.—It would be unsatisfactory that this case should turn upon an hypothesis. You are entitled to ask the Provost the question; and whatever he says I shall abide by it. My information is, that before the election, in the Board-room, Mr. Purser said to the Provost that he could not conscientiously take the oath.

Rev. H. Lloyd, D. D., Provost, T. C. D., examined. (Oath not required, by Petitioners' counsel.)

Vice-Chancellor—Is it a fact that before the election on Trinity Monday Mr. Purser stated in the Board-room, in reply to a question, that he could not conscientiously take the oath or declaration?

Dr. Lloyd.—I read to Mr. Purser the first passage of the Fellows' oath, and he then stated that he had an objection to some of the words; but he did not state that he refused to take the declaration at that time. He stated that his objection was to the words—"et quæcunque in sancto Dei verbo vere et exanimo credere," &c. (Fellows' oath, Mac Donnell's Book, page 42–43.) There was then some explanation between him and the members of the Board, to the effect that the words did not bear that interpretation, and he then seemed to me to withdraw the objection.

Mr. Butt.—Did he assent?

Dr. Lloyd.—I did not understand him as saying either that he refused or assented at that time. That was at a former meeting of the Board—at a meeting just previous to the election.

Dr. Ball.—Was it at the same time that the questions were put which are referred to in the answer?

Dr. Lloyd.—It was at the same time; but that question was withdrawn from him, and the other question was put relating to his repudiation of the Roman Catholic doctrine.

Mr. Butt.—Was it after his statement that he objected to that, and the information was given, that the question was withdrawn?

Dr. Lloyd.—It was after that. It seemed to be the feeling of the Board that it was the question in chapter 9 of the Statute—the declaration referred to there—that should have been put to him.

Mr. Butt.—Then, after he stated that he declined——

Dr. Lloyd.—He did not say so.

Mr. Butt.—Did he not object?

Dr. Lloyd.—Yes.

Mr. Butt.—Then, after that the question was withdrawn?

Dr. Lloyd.—Upon the explanation given to him as to the meaning of the clause, he seemed to withdraw the objection.

Mr. Butt.—What did he say?

Dr. Lloyd.—I understood him to——

Mr. Butt.—He did not withdraw it in terms?

Dr. Lloyd.—I cannot say he did.

Dr. Ball—Did you state that, according to the construction of the oath, it did not involve the question of verbal interpretation?

Dr. Lloyd.—I did.

Dr. Ball.—And after that he appeared to waive the objection?

Dr. Lloyd.—Yes.

Mr. Butt.—There is not any doubt that the Board knew that Mr. Purser was a member of the Moravian Church, and especially that he was a dissenter from the Church of Ireland. It is absurd to speak of the Moravians as the ancient Protestant Episcopal Church. If the Church of Ireland is the representative of the true Church, with Apostolical succession, the Moravian is a schismatic Church; therefore, any members of another sect must be taken to be dissenters from the Church of Ireland, and the question here is, whether a dissenter from the Church of Ireland is, under the Statutes, eligible, in conformity with the trusts of the foundation. I cannot forget that, twenty-six years ago, I appeared here as counsel for the College, when the Board thought they would have violated their trusts if they elected a Roman Catholic to be a Scholar, upon the broad ground that the Corporation was a religious institution—a college for religious education, in connexion with the Church of Ireland. The Board decided, and they were right, on the rejection of a distinguished student, because he was a Roman Catholic, though willing to take the Scholars' oath, upon the ground that the trust was for the Protestant religion.

Vice-Chancellor.—To take the Scholars' oath according to his own interpretation of it.

Mr. Butt.—I am quite sure he would not take any oath which he believed he could not fulfil. But I argued upon that occasion that the words of the oath imposed what rendered it such as to make it impossible for a Roman Catholic to take. I shall use the same argument now—that the words of the Fellows' oath impose obligations that render it impossible for a dis-

senter of the Church of Ireland to take it. There is not any difference in the fact that the Church of Ireland has been disestablished. The collective body has not been changed. Whoever was a member on the 1st of January, 1871, is a member now; the collective body was left the same. Its rules and constitution are not different, except that, at the striking of the twelfth hour upon the last day of the year 1870, instead of these rules and canons being matters of law, and binding on the members as such, they became binding upon every man by a statutory contract imagined for them like Locke's contract.

VICE-CHANCELLOR.—I want to know what is the rule of law. Will you say that a member of the Church of England would be qualified to be a candidate?

Mr. Butt.—I would say so.

VICE-CHANCELLOR.—Would a member of a Church of the Anglican communion?

Mr. Butt.—I think he would.

VICE-CHANCELLOR.—What difference is there between those cases and this?

Mr. Butt.—There is a great difference.

VICE-CHANCELLOR.—These are cases of constructive membership; they are not, literally, members of the Church of Ireland?

Mr. Butt.—I think they are, because they were members in 1870.

VICE-CHANCELLOR.—Suppose the case should arise of a person who was born after 1870?

Mr. Butt.—That would raise a question of *post-nati*. I think this Church Act will involve us in great difficulty. A great deal of information may be obtained by the consideration of such cases as that of the Cape of Good Hope and its Bishops, in which is involved the right of the Queen to appoint a Bishop for some purposes of the Church of England, not limited by the place where the Church has been established, but extended to every part of the dominions. Every prelate of the Irish Church, with one exception, holds his authority, as Bishop, by direct commission from the Queen.

VICE-CHANCELLOR.—The Queen located him.

Mr. Butt.—Every prelate, except the one recently elected, retains the power which the Queen's commission can give him as Bishop. I do not say that this applies to the spiritual power, but whatever visitorial power he possesses he derives from the Queen's commission, even when the Church is not established by law.

VICE-CHANCELLOR.—Suppose the present Bishops had disap-

peared, there is the Church of England and that of Ireland: would the members of the Church of England be then excluded?

Mr. Butt.—That does not arise under the Church Act. It existed when the Statutes were passed, because the Church of England and Ireland were separate.

VICE-CHANCELLOR—But it was called the Church of England and Ireland long before the Union?

Mr. Butt.—There is no doubt, when the Statutes were passed, and up to the Union, there was a Church in Ireland different from that of the Church of England, with different canons and constitutions, and it might have had different doctrines.

VICE-CHANCELLOR.—Would you say that the Charter confined it to the members of the Church of Ireland?

Mr. Butt.—I would, or to Churches united. The Church of England was united; its orders were recognised by the Church of Ireland.

VICE-CHANCELLOR.—The question is, whether the Charter excludes from eligibility every person who is not a member of the Church of Ireland, and says, that if a person were not a member of that Church he could not be admitted to a Fellowship?

Mr. Butt.—But if you are a Dissenter. What is a Dissenter? Suppose you say that any man who dissents from the Church of Ireland is not eligible.

VICE-CHANCELLOR.—The plain English of your argument is, that any man who is not a member of the Church of Ireland is disqualified.

Mr. Butt.—The question, then, is, who is a member of the Church of Ireland? Take a case in Chancery. Suppose that a man, to carry out the trusts of his will, appointed three trustees or guardians of his child, and if one died, he allowed the others to appoint another, supposing him to be a member of the Church of England; the difficulty of deciding who was a member of the Church of England was not a real difficulty, because the Church had, over and over again, declared that the old test was taking the Sacrament, and for a long time this was done. My rule is, that a man cannot discharge the duties of his Fellowship and be elected to the office, within the meaning of the Statute of Elizabeth, who is a dissenter from the Church of Ireland.

VICE-CHANCELLOR.—The Master of the Rolls, in the case which I have already quoted, *Attorney-General* v. *Clifton*, admits that, as a general rule, the Court should appoint a man who they believed would best execute the trust confided to him; but as a rule of law, it would not be a breach of trust in itself to appoint a Dissenter.

Mr. Butt.—That would turn upon the particular words of

the trusts; but in the case of *The Chelmsford Grammar School* it was simply a question of education.

VICE-CHANCELLOR.—There is a late case (*Baker* v. *Lee*, 8 H. of L., 495), involving the judicial discretion of the Court in appointing trustees. In that case, Lord Campbell and Lord Cranworth were of opinion that there was no absolute legal ground for excluding Dissenters from being trustees of a school in connexion with the Church of England. Your case is, that there is an absolute rule of law, which is one of exclusion and disability, and you must show that, by the operation of Statute or Charter, Mr. Purser is absolutely excluded, as in the case of Roman Catholics.

Mr. Butt.—I think I can do so; but the whole argument and the judgment in Mr. Heron's case at the last Visitation, proceeded upon the ground that the trusts of the Institution were such as to prevent the Board from electing a Roman Catholic. The decision in Mr. Heron's case went upon this, that the eligibility of Roman Catholics depended upon the construction of the College Statutes. Mr. Bewley, in the course of his remarks, fell into an error. There were two distinct impediments in the way of Roman Catholics—one of which was founded upon the Act of Parliament, another upon the Statutes of the College. The Act did not prevent them from entering College or becoming Scholars—there was another Act that did. But so far as the Act was concerned, they might enter College, and continue there up to the time they were to take the degree; then they would be met by the provision that required them to take the oath against Transubstantiation. What kept dissent out of the College was the Statutes. Once they were done by the Act, this did not interfere with the regulations of the College. Then came the King's Letters of 1794, which conferred the dispensing power, and we argued that these extended only to allowing Dissenters to go through College, and not a dispensing power so far as related to Fellows and Scholars. Dissenters were admitted into College before any alteration was made in the Statutes. The Royal Letter of 1855 recites the Statutes, and says, "Whereas it seems reasonable that Dissenters of the United Church of England and Ireland should enjoy the same privileges." This extends to all Dissenters: whatever was the case before that time, that Royal Letter put Dissenters and Roman Catholics upon the same footing exactly—that is, anything affecting them in the Statute is only dispensed with so far as relating to taking degrees, and if there is anything militating against Dissenters, it is the same as if the person were a Roman Catholic. When they became Scholars or Fellows,

they were subject to all the rules applying to Scholars or Fellows. This placed Dissenters in the College upon the same footing as Roman Catholics were. In the case of Mr. Heron, Judge Keatinge, the assessor, placed the question upon the principle that the College was a foundation for the religious education of persons in the Protestant religion. Let me go through the Statutes, and see if there is not a trust in the Fellows which would be violated by the election of a Dissenter. In my judgment the trust is to be found in the very first page of the Charter of Elizabeth. That Charter recites the Petition of Henry Ussher, to found a College in the City of Dublin for the better instruction of scholars, and goes on to say, "Know ye, that for the care we have for the youth of our College, and that they may be the better aided to learn good arts, and cultivate virtue and religion." What religion?

VICE-CHANCELLOR.—Do you think that Queen Elizabeth considered that religion was monopolized by the Church of England?

Mr. Butt.—I believe that the persons by whom these Statutes were drawn were wiser than we are now, and knew nothing about abstract religion. What I mean to convey is, that when Queen Elizabeth spoke of the religion of Ireland, she meant the Protestant Church. No other legalized religion existed at the time. Lord Eldon, more than a century afterwards, asked—what was a Unitarian?

VICE-CHANCELLOR.—The Queen meant the religion embodied in the Thirty-nine Articles.

Mr. Butt.—Not merely the Articles—she meant the whole religion.

VICE-CHANCELLOR.—She meant that a religion should be established in the Church in accordance with those fundamental Articles; but do you say that the members of a Church such as the Moravian have no right to receive Holy Communion in it, and should be excluded from it?

Mr. Butt.—I do say that. Why name the Thirty-nine Articles: why not take the Prayer-book?

VICE-CHANCELLOR.—The Statute of Elizabeth as to religion selected the Articles.

Mr. Butt.—Yes, as a subscription for the clergy.

VICE-CHANCELLOR.—One object of the Statute was professedly to secure "pastors of sound religion."

Mr. Butt.—You would accept a Roman Catholic without re-ordination, but you would not say that he was of sound religion before he came over to you? If a priest came over, he was in Holy Orders, but would you say that his religion was

sound? When Queen Elizabeth spoke of religion, she spoke of the religion which she professed and tolerated.

VICE-CHANCELLOR.—She meant the religion of the Church that had been established.

Mr. Butt.—Her object in founding the University was that the people of Ireland might be better able to receive good thoughts and views, and cultivate true religion. This intention has been put in a stronger light as regards the Professor of Theology, it being of the greatest consequence that the youth of the University should be instructed in the Christian religion, for the promotion of which this College was founded. This does not mean instruction in any doctrine but in those that were taught by the Established Church.

VICE-CHANCELLOR.—These are in the Articles.

Mr. Butt.—I think that the doctrines may be otherwise found.

VICE-CHANCELLOR.—If you mean as a test of heresy, it is the Thirty-nine Articles.

Mr. Butt.—Without saying what is a test, let Mr. Purser be brought up, and see will he sign those Articles. You must have some test. It is clear that the College was founded to further the Established Church; it is the Christian religion; Queen Elizabeth did not know anything about Latitudinarianism. She knew the Christian religion, and this Institution has been given in trust to persons to aid the youth of Ireland in studying the Christian religion as taught by the Established Church, which she assumed to be the true religion. I first say that there is a solemn trust, and I do not think that any decision conflicts with it. It is a trust for nothing else—a naked trust, to assist the youth of Ireland in acquiring a knowledge of the Christian religion as taught by the Established Church of Ireland, as then existing. It would be a violation of their duty if the Board selected a Fellow who was a Dissenter. I am not going into a discussion relative to the tenets of the Moravian Church. Of course there are differences between the Churches as to doctrine. The Moravian has heretical opinions relative to the Athanasian Creed, but it is not for the Visitors to determine whether this should constitute a vital dissent. If they were to do so, could you say that this is not included in the Articles? The Athanasian Creed is adopted by the Church of England—the Moravian dissents from it. The Articles say, We may take oaths and bear arms. The Moravian says, We cannot do so. I cannot enter upon the minute details of this matter. It is not for me to analyze this. Mr. Purser has thought fit to attach himself to a Church dissenting from the Church of Ireland. If a man

think it necessary to maintain a Christian profession that he should dissent from the doctrine and discipline of a Church, you must presume that he entertains a conscientious objection to that Church when he belongs to another.

VICE-CHANCELLOR.—Take the case of an existing Fellow who has modified some of his opinions, but has not departed from any of the established doctrines, would this be a cause of removal from the College?

Mr. Butt.—Mr. Walker was for that reason removed.

VICE-CHANCELLOR.—Suppose a person did not give up any of the doctrines of the Church, and was not unsound in any of his doctrines, but simply joined the Church of Scotland, would you consider that this was a cause for his removal?

Mr. Butt.—Yes. If you give me the case of a man who receives the sacrament every Sunday, preaches against and warns the students against everything connected with the Church of England, yet belongs to the Church of Scotland, this supposition would arise; but I cannot understand a man who gives allegiance to his Sovereign and Church going over to another, and being permitted still to regard himself as belonging to the Church he had abandoned: he must make his choice. Here is one Church that says it acts in conformity with the Scriptures; here is another Church, the Church of Ireland, that says it is the Church of the land, and all other Churches are schismatic. This is the intention of the College; this is the intention of the Statutes; and can it be said that any man who is unwilling to conform to this principle and practice is a fit and proper person to hold a fiduciary position in this University? and however Latitudinarianism may have crept into the Church of Ireland, the Church of Scotland would have too much reverence for her grand old traditions to allow any man to continue in a fiduciary position in her Church who was an avowed member of the Church of England, and received her sacrament.

VICE-CHANCELLOR.—As a lay man?

Mr. Butt.—It is a contradiction in terms.

VICE-CHANCELLOR.—I thought that they had some lay Professors.

Mr. Butt.—Yes, but not Professors of the Church of England. Let us now come to the Statutes. I shall not touch upon the Provost's oath. I shall refer to the oath taken by the Fellow; and the great question is, can a Dissenter—I will not say honestly—but can he take and really believe in that oath—can he take an oath that enjoins him to obey the Statutes of the College; "and take care they shall be observed by others as far as in him lies?" All the Statutes are in their character Church Statutes; they

oblige the Fellows to attend College Chapel; they oblige them to see that the students attend the service in the Chapel; to enforce attendance at Lectures, and discountenance all opinions set up against the Christian religion or the doctrines of the Church. How can a Dissenter do this? If he find that a person entertains opinions that are not in accordance with the Statutes, can he bring him before the Board, and say that he is wrong? The Statutes have not been repealed as to Dissenters, but have been left to the Board as they are, with a dispensing power to overlook them as to Dissenters and Roman Catholics. Every Fellow pledges his oath and conscience to abide by the Statutes, and sustain an institution which is exclusively Protestant. Can a Dissenter honestly take this oath? I do not say that Mr. Purser is not sincere; but I say that no Dissenter is a fit person to have a position of such trust in the affairs of the College. The oath goes on—"The profession of Theology shall be the end of my studies—that I may be able to serve the Church of God, unless God shall hereafter otherwise incline my mind." I suppose this means to give up his Fellowship?

VICE-CHANCELLOR.—He would have to do so, if he did not get a lay place or a dispensation.

Mr. Butt.—What is to be understood by the Church of God?

VICE-CHANCELLOR.—You need not draw any distinction now—when the time comes you may. So far as the question goes, he might be amongst the five not in Holy Orders. Substantial security has been afforded to the Church, the preponderating body being in Holy Orders; but as to others, they are not bound to study Theology. Suppose, when a Fellow took the oath, he was disinclined to take Holy Orders.

Mr. Butt.—He could not take it. It is the strongest part of our case, that the College was a Church of England foundation.

VICE-CHANCELLOR.—Might it not be reasonable to suppose that there would be many persons in the College who had a conscientious objection to take Holy Orders who would not object to take the oath?

Mr. Butt.—A dissenter from the Church of Ireland could not be expected, acting upon honest and conscientious feelings, to take the oath.

VICE-CHANCELLOR.—But the question is, whether there is a peremptory rule of law against it.

Mr. Butt.—The Statutes compel the Board to elect persons who are fit for the office. Suppose a Mussulman were to get into the College?

VICE-CHANCELLOR.—They could not elect him.

Mr. Butt.—Suppose he is willing to take the oath—suppose he happens to choose to do so—what is there that can exclude him?

Dr. Ball.—He is a heretic, and, as such, not admissible.

Mr. Butt.—He would not believe a single doctrine condemned by the first four Councils; these are doctrines that are called *pseudo*, but the Mussulman does not believe one of them, therefore he is not a heretic. The oath is to be taken as a test fairly of the man who is to be elected, and I say that a Dissenter is no more a fit person than a Mussulman.

VICE-CHANCELLOR.—May he not be fit to get a lay place, if he could conscientiously take the oath?

Mr. Butt.—What I mean to convey is, that the oath is one of the best tests of a man's fitness: it would be a complete test of a Mussulman's unfitness to take it—he could not conscientiously take it. How could a Dissenter, such as Mr. Purser, say that the profession of Theology, as taught by the Church of Ireland, would be the end of all his studies, unless God shall incline his mind otherwise, for that he might be able to profit the Church of God—meaning the Established Church of England and Ireland? How any man can say this is a fit oath for a Dissenter I cannot imagine. I cannot conceive that any man with his eyes open, or who has the slightest regard to the solemnity of his oath, could allow a Dissenter to trifle with that oath: I cannot conceive how he could permit him to come and place his hand upon the Gospels, and declare that the profession of religion, as taught by the Irish Church, would be the end of his studies, and that he would adopt it, unless God otherwise turned his mind——

Dr. Ball.—Unless he were to obtain a lay Fellowship.

Mr. Butt.—Then he would say he did not believe that the Church of Ireland was the Church of God, and that he did not believe to be true the Theology which that Church taught; nevertheless, unless God otherwise inclined his mind, the profession of the Theology in which he did not believe should be the end of his studies. Why, the words, "otherwise incline my mind," imply a present intention to do a certain thing, and unless the man is quibbling and trifling with his oath, he means it. How can he take the oath, unless he honestly believe that the religion taught by the Church of England should be the end of his studies?

VICE-CHANCELLOR.—According to your argument, no one could seek for a Fellowship who looked forward to be merely a lay member of the College.

Mr. Butt.—I may have old-fashioned notions, but I know that if I were a Dissenter, all the honors that the Queen could confer upon me would not induce me to take the oath to make the profession of Theology the end of my studies, unless I meant that it should be so. Those by whom the Statutes are administered are bound to regard the oath as a distinctive and solemn test.

VICE-CHANCELLOR.—How can you apply the rule to the case of a man who is within either branch of the exception? If the matter is viewed in this light, as it usually has been, the difficulty disappears.

Mr. Butt.—I now come to the Statute in reference to Divine Worship. [Refers to page 41, ch. 9, *De Cultu Divino.*] The Statute originally provided for the offering up of prayer so many times each day; after the Morning Prayer a sermon was to be preached, and the students during Lent were to go in solemn procession to the cathedral of St. Patrick. But these arrangements have been changed. The form of worship is to be that which is prescribed in the public Liturgy of the Anglican Church. Is this consistent with dissent from the Established Church? The Fellow pledges himself not only to attend Chapel, but to take care that the Statutes shall be observed. If Mr. Purser, as a Moravian, were consistent to his principles, would he not say to the students, "come with me to the Moravian Church; its form of faith is purer than that of the Protestant Church; you will there hear the Gospel more truly preached." He pledges himself to attend the College Chapel, and to take care that the students do likewise. These were the arguments used by me in the case of Mr. Heron; these were the views I urged before the Visitors as counsel for the College; these were the arguments that convinced them that, in principle, a person who was not a member of the Established Church was not a fit person to be admitted as a Scholar; and I ask you now, in the face of the country, in the face of the Church of Ireland, in the face of the Dissenting Church of the land, and in the face of everyone having a regard for the line of demarcation that should be drawn between a union with a religious body for the pure purposes of religion, or one formed with selfish and worldly objects, whether a Moravian, who thinks he can worship his God better in Bishop-street than in any other place, yet swears that he will attend the College Chapel, and take care that all the students shall also attend, is a fit person to elect as a Fellow to the old Protestant University? This question is not to be judged by technical rules. The whole of these are Church Statutes; it is not a formal and mechanical

adherence to the rules of the College, but a yielding of the heart and soul, which a sincere believer in her doctrines alone can give. Unless he can take this declaration he is not a fit person to be elected, and the College violate their duty when they admit a Moravian to its Fellowship. The Eucharist is to be administered. "Let the Holy Eucharist be taken." Is it right to place a Dissenter in such a position as this? A Dissenter might come in and say he had not any objection—right or wrong, he was prepared to take the sacrament. If I were allowed to give my opinion, the breaking the bread is the test of an entire adhesion to the religion. And can you expect a Presbyterian or other Dissenter to come into this College, receive the sacrament, and make others do so, if he thinks he is bound to adhere to the ordinances of his own creed? You must assume, when he separates from the Protestant Church, that he has strong reasons—not merely those connected with his temporal interests, for so doing, and that no man would lightly dissent from the Church of England; therefore you must think that his motives are pure, and that he is inclined to good, when he dissents, with such strong inducements to agree. I now come to the duties of Dean. [Refers to page 59, ch. 13, *De Officio Decanorum.*] The duty of the Dean is to see that all Fellows, Pensioners, and Sizars shall be present in Chapel on Sundays, and that the Holy Communion shall be taken as often as assembled. Can a Dissenter conscientiously and honestly fill this office? What impressions would be left on the mind of a young man if a teacher who filled the office of Dean, or acted as his tutor, were to come to him to go over to the Chapel in the College, and receive the elements which are too sacred to speak of even in this hall? What impression would it have upon the mind of a student, if he were directed by a man who did not himself believe in the things he enjoined and inculcated to comply with rules which did not accord with his profession of faith?

VICE-CHANCELLOR.—Suppose that a Dissenter were to live in the College, and that he had not any objection to receive Holy Communion in the Chapel, as Bishop Cosin did in the French Church, what injury would it do him?

Mr. Butt.—I think it would. It would reduce religious instruction here to a system of mere University police.

VICE-CHANCELLOR.—One of the best men I ever knew, a Dissenter, had no conscientious objection to do it. He was a Fellow, but was brought up strictly in the Presbyterian Church, yet he had no objection in this respect.

Mr. Butt.—If this be so, why not let in Unitarians?

VICE-CHANCELLOR.—There you come to the test of Authorised Scripture.

Mr. Butt.—The Unitarian believes in the Scriptures more strictly than you do.

Vice-Chancellor.—The Board are to be supposed to know all about the candidate, and the different elements of qualification which he possesses are all before them; but how can you lay down a constructive rule of law in such a case as to absolute disability and exclusion?

Mr. Butt.—I hope I know better than to look for a rule of law in the Statutes. What, I will ask, is to become of *Lady Hewley's Charity* (7 Simon, 312), and the case of *The Attorney-General and Drummond* (1 Dru. and War. 366), if this qualification is to be taken as test for a Fellowship in the University?

Vice-Chancellor.—That turns upon the construction of the instruments of foundation.

Mr. Butt.—I do not think so. What I want to combat is—my first proposition is, that to exclude a man from a fiduciary position in an eleemosynary corporation, it does not require a positive rule of law—it is enough if it be shown he is not a fit person to elect. In the case of *The Attorney-General* v. *Drummond*, there was not any direction in the deed establishing the *foundation* in favour of Trinitarians. The trust deed executed by the founders in that case was instigated by "a pious disposition and concern for the interest of our Lord Jesus Christ, and the welfare of precious souls." There was not any provision about the religious trusts. Lord St. Leonards says, in that case (1 Dru. & War., p. 366): "There is one great question, without discussing which it is impossible to enter on this subject at all, viz., whether parol evidence is admissible to aid in the construction of a deed. Now, that parol evidence, in a general sense, is not admissible to construe a deed admits of no doubt; you must take the deed as you find it." Again he says: "It is one of the settled rules of law, that in construing a deed or written instrument the Court is at liberty to inquire into the surrounding circumstances which may have acted upon the minds of the persons by whom the deed or will (for it matters not whether it was one or the other) was executed." Having reviewed the case at great length, he goes on to say: "I have satisfied myself—I have satisfied my own conscience that, according to the evidence, this trust is one which excludes Unitarians altogether from participating in it." The result was, that Lord St. Leonards removed every one of the Unitarians who had become trustees. There was not in that case any provision about the religious trusts—there was a provision about the application of the funds. The Court held that the existing dissenting Protestant congregations in Dublin were the

congregations intended to be entrusted with the management of the trust funds, and it was impossible it could be held that a Unitarian came within the trusts. It was plain that Protestant Dissenters in that case meant Trinitarians, and the Court would not allow Unitarians to administer the fund.

VICE-CHANCELLOR.—As a matter of judicial discretion, the Court decided it as to trustees.

Mr. Butt.—That was not this case. The funds had got into the hands of trustees who were not qualified to administer them, and these were removed because they had acted contrary to the trusts, which it was intended should be carried out solely by Trinitarians. Lord St. Leonards himself said, in the course of his judgment: "A Mahommedan might say, 'I am a Christian,' as he believes, in a certain sense, in Christ; but, I must ask, what kind of a Christian he is? If I were told who was speaking, I should know in what sense he used the words." In the course of his judgment, his Lordship said, that although the deed in *Lady Hewley's case* did not mention anything about the religion of the trustees, they might look to all the circumstances by which Lady Hewley was surrounded at the time at which the deed was executed, in order to ascertain her meaning when she used the words.

VICE-CHANCELLOR.—A Court of Equity must see that the trusts are carried out, and appoint persons who are competent to do it effectually; and in the present case the Board decided that Mr. Purser was fit for the Fellowship, unless he was legally disqualified.

Mr. Butt.—Unless he is excluded by the whole intention of the instrument establishing this College.

VICE-CHANCELLOR.—When it is a question of discretion the Board may be controlled if they have not acted in a *bonâ fide* manner; but here the Visitors have not any right to interfere with the Board, unless they have not properly exercised their powers. They are the exclusive judges of the fitness of Mr. Purser, unless so far as he may be legally disqualified.

Mr. Butt.—This is a rule of law, and that one of the highest—that persons who have been charged with a trust must execute it according to the intention of the founder. I may put it into a syllogism—the intention of the founder was to propagate the doctrines and ordinances of the Church of England; the Board have elected a man who is not a member of that Church; therefore they have violated the intention of the founder, and the election should be set aside.

VICE-CHANCELLOR.—To appoint or remove trustees, so far

as it involves a question of fitness, is a question for the Judicial discretion of the Court; but an absolute law of exclusion is another matter.

Mr. Butt.—This is a case in which the Court appoints its own trustees, and if the Court of Chancery elected a Fellow, they could not elect a Dissenter, no more than the Board of Trinity College could do so.

VICE-CHANCELLOR.—That would be the exercise of judicial discretion.

Mr. Butt.—It is not so; it is an instrument of the highest jurisdiction against trustees not lawfully appointed. Suppose there were no Visitors, and an information were filed against the College for electing a Dissenter, and the Chancellor removed him, and appointed a Fellow who belonged to the Church of England, would you not say that was an exercise of discretion? We are asking you to do what the Court did in the case of the *Attorney-General* v. *Drummond.*

VICE-CHANCELLOR.—We have not a right to substitute our discretion for that of the Board.

Mr. Butt.—Nor has the Chancellor. These trustees were Trinitarians, and he had not any discretion. The Chancellor there did not say, "I think it would be better to have the funds administered by Unitarians;" it was his duty to decide according to the deed.

VICE-CHANCELLOR.—He decided that, as a matter of law, the Unitarians were not the object of the donor's bequest. When he decided legally, it was his duty to follow out that decision by taking care that the management of the funds should be in the hands of proper trustees; and this was done as an act of judicial discretion, as in the case of *Shore* v. *Wilson*, 9th Cl. & Fin., 581.

Mr. Butt.—This is my argument—that a Dissenter is not a fit person to elect; and you should declare that his election is void, because he is not a proper person. How can you perceive a difference between his ineligibility and my argument, that the Church of England is meant, and a Dissenter is not eligible? When you filled the office of Chancellor you had no more power to remove a trustee, unless from his conduct, than I would have; but if you found a Unitarian, or other dissenting party, elected to administer a fund of the Church of Ireland, you would be bound to remove him, by the most sacred obligation of your office, and I say that the same argument applies in this case in reference to the Board.

[*Court adjourned.*]

THIRD DAY, TUESDAY, 18TH JUNE.

Mr. Butt rose to resume his address.

Mr. Bewley, addressing the Visitors, said:—I wish to mention, before my learned friend proceeds, that in Read's History of Presbyterianism, it will be found that two Presbyterians, Fullerton and Hamilton, were Fellows of this College in the year 1593, and in 1594, Travers, a Presbyterian, was Provost. In 1601, Alvey was Provost; Alvey had been expelled from Cambridge for non-conforming.

Archbishop of Dublin.—Nonconformists—Puritans, I suppose?

Mr. Bewley.—Yes, the Puritans were Nonconformists, and Alvey was such.

Mr. Butt.—I do not know whether my learned friend intends by his observation to mean that a Presbyterian may be elected a Fellow, and that would follow from admitting a Moravian. I thought they were endeavouring to show a difference between a Moravian and Presbyterian; but unless my learned friend thinks that Presbyterians should be admitted, this reference to Read's History has not anything to say to the matter. The usage of this College has been testified by the Provost and Fellows before the Royal Commission; it has never been doubted nor questioned in any discussion in Parliament, in any court of law, nor in any society, that hitherto the Fellows of this University have been and should be members of the Church of England. Cases may be taken from disturbed times; instances may be found of Presbyterians having been connected with the College; times may be referred to when Presbyterians held livings in Ireland—the life of Jeremy Taylor sufficiently proves this. I do not suppose, however, that a Presbyterian clergyman could now be inducted into a living; but let it pass for what it is worth.

I was sorry at being obliged to ask the Court to adjourn on the last day—not that I think that any time could be thrown away in this investigation. What is sought here is a revolution in the College, which is of very great moment, and so long as any light could be add d to the discussion, our time would not be lost. My reason for not wishing to conclude hastily on Saturday was, that I intended to submit to you some principles, unquestionable principles, of law, and I was desirous to submit them with so much clearness as to afford the Court full opportunity of considering the propositions that I advance with the

authorities to which I refer. The propositions I would venture to submit are these. My first proposition is, that in an eleemosynary body, or, indeed, in a charitable foundation of any kind, the persons who for the time being constitute the Corporation are bound to carry out the intention of the founder; and if they do not do so, they are amenable to an information in the Court of Chancery, and *a fortiori* in the case where there has been a much stronger departure from principle, it is to be set right by the Visitors, whom the founder wishes shall represent him. Secondly, the intention of the founder must not necessarily be expressed in direct language, but is to be gathered from the whole tenor of the instrument by which the College was founded, and when that intention has been gathered and ascertained, any departure from it should be corrected by the Visitorial power, which exercises juisdiction over this Corporation.

VICE-CHANCELLOR.—You must collect the intention by the construction of the words in which it is embodied.

Mr. Butt.—I do not want to resort to any technicalities. I do not know the meaning of collecting anything. By construction I mean, that if a plain man sees that the intention of a donor or founder is clear, and has no doubt whatever as to what was intended by him, the Court is bound to carry out that intention. I do not know what is meant by putting a construction on such a matter. I gather the intention of the founder from the duties to be discharged by the authorities, the words that have been so plainly used, and the times in which the foundation was made, that the founder contemplated a certain state of things, and those who are called upon to ascertain that intention are bound to see that it is carried out—that the intention shall prevail. It is the solemn and sacred duty of this tribunal—and never has a tribunal been more solemnly and awfully charged—to find out the intention of the founder, and see that no technical difficulties are allowed to stand in the way of arriving at the true conclusion. I intend to submit these propositions, not as doubtful propositions, or requiring proof, though I shall cite cases to sustain them; but as the elementary principles of law—the A, B, C, of our law. I wish to state my propositions consecutively, and first I say, in reference to this tribunal, if you, my Lord Archbishop, and you, Vice-Chancellor, see in your conscience and judgment that Charles I. and Queen Elizabeth intended that the Fellowships of this University should be confined to members of the Established Church, you are bound to give effect to that intention.

VICE-CHANCELLOR.—We are bound by the intention, when it is ascertained by the judicial construction of the words.

Mr. Butt.—By-and-bye you will do your duty; I am now performing mine. I am laying down law—primer law, indisputable law, and such as cannot be disregarded without violating every principle by which foundations of this kind should be regulated. I repeat, if the Visitors see that the intention of Charles or Elizabeth was, that these Fellowships should be confined to the members of the Church of Ireland, they are bound to carry out that intention, and not to allow any technical difficulties to obstruct the law. Secondly, you are to gather the meaning as men construing the language used in the ordinary manner, and judging of the intention from the whole of the Statutes, what the King really did intend, and having so gathered it, you are as much bound to carry out the intention as if he had distinctly said in so many words—"None but members of the Church of England shall be members of the University," which, I think, he has in fact said. I will not refer to any case to which the Solicitor-General has not referred. I take the case of *The Attorney-General* v. *Drummond*, 1 Dru. & War. That was a case in which, a great many years ago, a trust had been created for "The preaching of Christ's Holy Gospel, and the maintenance of poor Ministers of Christ's Church." The congregation went on for some time without any change taking place in their *quasi* corporate character; there was not any change made in any of the rules of the body, but, as we all know, they, like many other Presbyterian bodies in Ireland, lapsed into Unitarianism, and departed from the orthodox principles of the community, and the funds were diverted, without any violent change, from the original purpose to that of the Unitarian body. An information was filed against the trustees.

VICE-CHANCELLOR.—Did not the question mainly turn upon the ground whether the Unitarian body came within the meaning of "Protestant Dissenters" at the date of the deed?

Mr. Butt.—Yes, and of "Christ's holy religion."

VICE-CHANCELLOR.—To find out the meaning of the words used, a reference can be made to books and historical documents, and in the case to which you refer the question was, what was the meaning of the words "Protestant Dissenters," at the time of the execution of the deed, and it was held by the Court of Chancery, and very properly held, that the words did not then include *Unitarians*.

Mr. Butt.—Lord St. Leonards delivered a long judgment, and then he said: "I have satisfied myself—I have satified my own conscience that, according to the evidence, this trust is one which excludes Unitarians altogether from participating in it." The case lies within the smallest possible compass.

VICE-CHANCELLOR.—The case was considered from the surrounding circumstances of the donor, and it turned ultimately upon the words of the deed.

Mr. Butt.—That is what I ask you to do here.

VICE-CHANCELLOR.—I do not think there is any real difference between your view and mine, because I take it to be quite clear that whatever intention of the founders can be legitimately collected from the Charters and Statutes, we are bound to see that it is obeyed.

Mr. Butt.—Then, my argument will be greatly shortened by this—my plain proposition is, you are bound to find out the intention of the founder.

VICE-CHANCELLOR—His intention is to be collected from the words of the instruments in which it is expressed.

Mr. Butt.—There was not any expressed intention in the case I cite.

VICE-CHANCELLOR.—The words "Protestant Dissenters" had a definite meaning at the date of the deed, and that settled the whole question.

Mr. Butt.—I do not wish to go into these subtle disquisitions and fallacies; what was the intention? How has it been gathered in any one of those cases where there was an institution for the purposes of education? It is implied that the purpose must be religious in its character; there was not any expressed intention, that was, that the education should be in connexion with the Church of England, and a decree was pronounced, on a scheme of Edward VI., upon that principle. I admit that the meaning must be taken from the deed.

VICE-CHANCELLOR.—It is not only my view, but the view of a very great lawyer, Lord Wensleydale, that the intention is not to be taken to be other than that embodied and expressed in the instrument, legally interpreted. You talk of the intent as if it were something apart from the words used.

Mr. Butt.—I must deny that Lord Wensleydale, or any other great or small lawyer, ever laid down such a proposition as that, or denied the proposition that when a person endowed an institution for the purposes of education, you are to gather from the whole deed, and all the surrounding circumstances, what he meant by "education." To apply this rule, we gather what was the intention of Charles I.

VICE-CHANCELLOR.—I merely wish to clear the proposition of a lurking fallacy. This was what Lord Wensleydale was careful to do. Beyond this, I have no difference of opinion.

Mr. Butt.—I repeat—and it is possible this case may go further—you have no right to assume that the Visitors will be una-

nimous; and when the case comes before the Chancellor, I am quite sure that my proposition will be understood. At all events, I desire for my own sake, and for the sake of the Bar of Ireland, that it shall be understood. It is unquestionable law—that in the case of any Educational Institution, far more in a case such as the present, the intention of the founder is to prevail, and that intention is to be gathered from the position in which he stood, the circumstances in which he was placed, and all he has said in the instrument. I fearlessly stake my professional character upon this proposition being sound law. I now come to the case in 8 House of Lords, *Baker* v. *Lee*. In that case a school was founded in the reign of Edward VI., at Ilminster, and the trust declared was, first, for the teaching of literature and Godly learning, or "Godly learning and knowledge." The deed then went on to direct that if, upon taking the accounts in October of each year, there should be, after providing for this purpose, any surplus, then the trust, secondly, was for the mending and repairing the highways, bridges, and watercourses of the parish. For a period of 156 years Dissenters had been admitted with Churchmen to the management of the trust.

VICE-CHANCELLOR.—There the parties were trustees.

Mr. Butt.—Let me not get into any fallacy. There are three things that may be distinct in the charity:—First, the object of the charity. You will find cases in which the object of the founder was confined to the members of the Church of England. There is a second class of cases equally distinct, that the persons who give the education should be members of the Church of England; and a third class of cases is, that none should be trustees but those who were members of the Church of England. There are cases in which it is held that the benefits of the trusts were intended only for the members of the Church of England. This is a very strong case, and certainly, having regard to the progress of opinion, you would require a very clear case to exclude from education persons not members of the Church of England. I do not know of any case in which a doubt has been suggested, that in the case of a school for education in the principles of the Church of England the teacher should be a member of that Church.

VICE-CHANCELLOR.—Do you mean to say that the teacher ought to be or that he must be a member of the Church of England?

Mr. Butt.—That he must be by law.

VICE-CHANCELLOR.—Is there any case in which a person, not a member of the Church, was held to be legally disqualified or not legally appointed merely because he was not a member?

Mr. Butt.—That is the fallacy—legally appointed. If in

any one of the schools they appointed a master who was not a member of the Church of England, he might be removed upon a Bill filed in the Court of Chancery.

VICE-CHANCELLOR.—In the case of *Baker* v. *Lee*, the Master of the Rolls had it laid down, that though, *primâ facie*, and as a general rule, it would be proper for trustees to be members of the Church, as persons who, generally speaking, would be more likely than others to carry out the views of the founder, yet Dissenters were not, as Dissenters, legally excluded. Lord Cranworth, in the same case in the House of Lords, said he knew of no law making it imperative on the Court to make a selection of members from the Church of England, as trustees, or saying that Dissenters were disqualified, provided the other circumstances in the case sanctioned their nomination. The Lord Chancellor, in his judgment, stated distinctly that a person not being a member of the Church of England was not a legal disqualification for being a trustee.

Mr. Butt.—He was overruled in his opinion.

VICE-CHANCELLOR.—Not as to this. Look to the end of Lord Wensleydale's judgment, in which he says that the Lords Justices exercised their discretion properly—he went upon the ground of the discretion of a Court of Equity, and not upon a rule of imperative law.

Mr. Butt.—That was a case in which there was an application to the Court of Chancery to sanction the appointment of trustees, and very respectable persons were proposed. There was an appeal from the ruling of the Master of the Rolls, other trustees, besides those who were members of the Church of England, having been appointed. The Lord Chancellor, in giving his judgment (p. 507), says—"In considering this question, we must ascertain what are the objects of the founders of the charity, which the trustees are to carry into effect," &c.

VICE-CHANCELLOR.—There were two grounds to be considered in the case—the ground of propriety, and the ground of legality. The Lord Chancellor thought that, "if the circumstance of not being a member of the Church of England was not of itself an absolute disqualification from being a trustee of the charity, the opinion of the Master of the Rolls that Dissenters were eligible was correct."

Mr. Butt.—There is a passage in the judgment of Lord Wensleydale which I shall read:—"If their duty had been to appoint and pay a schoolmaster only, and repair his house, the Master of the Rolls and the Lords Justices would not have differed in opinion. They would have agreed that where the Court had a discretion to appoint fresh masters for the management of

a school in England, where the intention of the founder was to provide for the religious instruction of the scholars, it must be taken to be, *primâ facie*, according to the doctrines of the Church of England, and that the trustees to be appointed, in the full exercise of the discretion vested in the Court of Chancery, for the greater certainty of obtaining that object, ought to be members of that Church. There were several previous *dicta* and decisions to this effect." In that case, the Master of the Rolls, the Lords Justices, and the House of Lords were unanimously of opinion that if the trustees were for a school only, a person, not a member of the Church of England, was not ineligible, but ineligible as a trustee for religious purposes, because he was not a fit and proper person to administer that trust, and the Board are in this case required to elect—"aliam idoneam personam, vel alias idoneas personas." The case of a Fellowship cannot be considered in the same category with such a case as that. The case of a trustee is the weakest of all cases; and even in that case, in which there was also a trust for the repair of roads and highways, the House of Lords decided that Dissenters were not eligible. Of all the propositions that have been put forward, that which has been urged by my learned friends upon this point is the most truly subversive of this ancient University—that the decision as to whether a person is or is not fit for a Fellowship rests with the consciences of the Board. It has been said that Equity has varied according to the length and breadth of the Chancellor's foot; but to say that a Dissenter is eligible, because in one year he may be chosen by four or five persons who think that a Dissenter is qualified, and the next year it may be declared that he is ineligible, that the Board are to have the privilege of judging according to their consciences, is about the most monstrous proposition ever propounded before any legal tribunal: much less should the Fellows be allowed to determine on their own selection—it is upon the Statutes that they are to decide—and the Statutes point out to them what should be done. Again, Lord Wensleydale says—"We are not informed what precise part of the surplus was at the time of the execution of the deed, or is now, available for the second purpose mentioned in the deed, so as to judge of its relative importance; but looking at the deed, and the recitals, I think it clear that education in Godly and other learning was its principal object." Lord Chelmsford says (p. 520)—"There has never been, throughout the protracted litigation in this case, the least appearance of a doubt in the minds of those who have had to decide the question, that under the Foundation deed of the 18th May, 1549, the school to be established was a school in which religious instruction was to be

given in conformity with the doctrines of the Church of England." Again—"We are left to gather from the deed itself that the one great object in the mind of the grantor, without which it is plain it never would have been made, was the foundation of a school for "the virtuous education of youth and Godly learning." Again, he says—"I look to the deed itself, and to the duties which the trustees have to discharge, to the important purpose in view, the establishment of a school for religious instruction, and to the important power of appointing and removing a schoolmaster, who is to instruct, teach, and bring up children in Godly learning and knowledge; and thus, from the great and essential objects of the deed, collecting the intention of the founder, I ask whether it is possible, with such objects, he could have meant ever to confide to Dissenters the charge of a trust which he would know they might feel conscientiously bound to endeavour to defeat, and into which, if one trustee of that description were once admitted, there would be nothing to prevent the whole body, or a majority of it, being in the course of time thus composed?" I ask you to look to the Statutes, the duties of the Fellows, the establishment of a school for religious purposes, and the importance of having proper teachers, and I ask you whether the founder ever meant to allow Dissenters to obtain positions in which they would have opportunities to defeat the very trust to carry out which it had been constituted? Has there not been a recognition of my principle in the case I have cited?

Vice-Chancellor.—There are no words legally to exclude Dissenters; their admission was a question of fitness.

Mr. Butt.—Not one of the Judges said anything in the case that could fairly be said to mean that. Let me read what Lord Chelmsford said, and paraphrase it:—"I look to the deed itself." Will you, my Lord Archbishop, look to the Statutes? You are here, because, as Archbishop of the diocese, you may preserve the religious character of the Institution. "I look to the deed itself." Will your Grace look to the Statutes? and where, I ask, will you find any discretion left as to the propriety of the election? "I look to the duties which the trustees have to discharge; to the important purpose in view." I ask you to look to the nature of the trust in this case. Is there a word that would justify the suggestion that the thing should be done, if in their sense of propriety it might be done? Is not this the law—law never questioned till Saturday last, and to which any Court administering justice are to have regard—that they shall look to the deeds and the Statutes? It is all you can do—it is all you are required to do. You are to look to nothing but the Statutes, see what the duties are which the Fellows have to discharge,

and ask whether it is possible the founder intended that Dissenters should participate in the advantages derivable from these trusts.

VICE-CHANCELLOR.—You pick out and paraphrase a sentence from the *dicta* of one Judge, and omit what has been said by the other Judges.

Mr. Butt.—We have it, at all events, that Lord Chelmsford was of opinion that Dissenters were ineligible even as trustees; and though they had been admitted with Churchmen to the management of the trust for 156 years, the Lords Justices and the House of Lords were of opinion that they should have been excluded. If a time arose when it was considered that it might answer some purpose of the trustees—further some public object—meet the views of a party, or facilitate legislation, that Dissenters should be elected, would any Chancellor allow trustees so appointed to remain in office, in the face of the decision of the House of Lords? There is the decision of the highest tribunal in the land. It is from the whole Statutes you are to collect the intention of the founder. Let me, before I proceed further, ask the Court to consider an argument which is of a character still more extraordinary than that which says that the Board are to consider whether, according to their consciences, they may allow a Dissenter to hold the office of Fellow. The argument to which I refer is, that the Statute, having defined "heresy" as a disqualification for Fellowship, this is the only thing to which the Board are to look, and that a person could not be convicted of this unless it were condemned by something to be found in the first Four Councils. A more unfounded proposition than this has never been advanced. It is a concatenation of mistakes and blunders. I have the Statute here, the 2nd Eliz., ch. I., Irish, A. D. 1560. What does it say about this heresy? This Statute, after asserting the Visitorial power of the Crown over matters usurped by the Church of Rome, enabled the Crown to exercise that power by a High Commission, which power was restricted, and it was enacted (sec. 17), that this High Commission should not have the power of adjudging anything to be heresy except that which had been condemned by the first four Councils, although, unfortunately for Mr. Purser, he has not only been condemned, but anathematized by that Council. What does the Statute further say? "Nothing shall be deemed to be heresy but that which has been adjudged to be so by the canonical Scriptures, by the first four Councils, or by a General Council, whose judgment has been founded upon the express words of the canonical Scriptures." Sir Mathew Hale complained that the Statute had abridged many things called heresy by the

Church of Rome, when he considered that a heresy was punishable by death, and I was surprised to find that the Act is in force; so that if the Lord Archbishop convicted a man of heresy, he could exercise the powers he possesses, and deal summarily with the offender. Sir Mathew Hale, in his Pleas of the Crown (p. 383), treats of this subject, beginning thus:—"In the general name of heresy there have been, in ordinary speech, comprehended three sorts of crimes," &c. I would be exceedingly ungrateful to this great Institution if I were to speak of it in any terms but those of affection and veneration, and I rejoice that I have received my education here, in a University in which some of the most distinguished Irishmen have been prepared for the great struggle of life; but I cannot help saying that the Board were placed in an undignified position when they called Mr. Purser into their room and the Provost asked him did he hold any opinions which were held to be heretical by the first four Councils. The Vice-Provost should have followed it up by asking him—"Pray, Sir, what is your opinion of things in general?" One form of question would be as proper as another. Or it might be asked, "Do you hold anything condemned as heresy by the canonical Scriptures, or any opinion of any Council, including that of the Council of Trent, provided it is founded upon a certain warrant of Holy Scripture?" If such an election as this were allowed to stand, and were regarded as legal, the University would be brought down from the high place which it holds amongst scholastic institutions in the land. I have before me a book of some authority—The Church Dictionary; by Dean Hook, Dean of Chichester. He says (p. 202): "General or Œcumenical Councils, or Synods, are assemblies of Bishops from all parts of the Church to determine some weighty controversies of faith or discipline. Of such Councils the Catholic, or universal Church, has never received or approved more than six." He then enumerates the Councils—Nice, A.D. 325; Constantinople, A.D. 381; Ephesus, A.D. 434; Mercian, A.D. 451; Second Council of Constantinople, A.D. 553;—omitting the Council of Jerusalem. When he speaks of "heresy" he gives a lengthened description of it; and, having given his own definition of heresy—"An arbitrary adoption, in matters of faith, of opinions at variance with the doctrines delivered by Christ and the Apostles, and received by the Catholic Church"—he gives the way in which the word has been defined by Dr. Johnson:—"Heretic—one who propagates his private opinions in opposition to the Catholic Church." I believe that the term comes from a Greek word which means "choice;" and heresy consists in choosing a religion for yourself, instead of submitting to authority.

VICE-CHANCELLOR.—It is defined in Burns' Ecclesiastical Law to be "An opinion contrary to any Article of the Christian faith." But the question is, what was the meaning of the word heresy, as we find it in the Charter of Charles I.? The Statute of Elizabeth was not repealed for three years afterwards. Lord Coke gives a case upon the point, and refers to the Statute of Elizabeth, in which he said, although it was only a special direction, it was a good direction as to heresy, at all times.

Mr. Butt.—The definition of heresy is not to be taken otherwise than from its being contrary to the canonical Scriptures, or a General Council, and we are not to follow the interpretation of every Judge.

VICE-CHANCELLOR.—I really cannot see that this question of heresy has anything to say to this case.

Mr. Butt.—I submit that it has. The Board wanted to try Mr. Purser for heresy.

VICE-CHANCELLOR.—They had no right to do so.

Mr. Butt.—I am not sure but they had. They were desired not to appoint any man who had been convicted of heresy. This does not mean a conviction otherwise than before the Provost and the Senior Fellows; and I contend that they have been led into an error in believing that nothing could be regarded as heresy except something that had been condemned by the first four Councils. The Statute leaves it open to the Church to have defined controversies in matters of faith.

VICE-CHANCELLOR.—What difference can this matter make in the very serious question we have to decide?

Mr. Butt.—I am answering the arguments adduced at the other side, and I ask, does it make no difference that the Board called in this gentleman to try him for heresy, and applied this test? Let us see what it was; it is something that is contrary to what has been approved of by the Councils of the Catholic or Universal Church, according to *Dean Hook*.

VICE-CHANCELLOR.—Is he a heretic within the meaning put upon the term by these Councils, or even according to the restricted view which the Board put upon it?

Mr. Butt.—A question of this serious nature is not decided by such a proceeding. I care not under whose advice this has been done—if even the Chancellor of the University had been the adviser of this ridiculous proceeding. Is this the manner in which the Constitution of this ancient University is to be intrigued away to meet the exigencies of a political party?

VICE-CHANCELLOR.—That is a very strong expression.

Mr. Butt.—I might make it stronger, and I have a right to argue thus.

VICE-CHANCELLOR.—Then if you have, you should be able to prove what you assert in such terms.

Mr. Butt.—There are cases in which an advocate must be strictly confined to his mere duty as such ; there are other cases, in which, as was said by one of the greatest of English advocates, he should merge his duty in that of the citizen, when the liberties of England were involved;—and, as a member of the Senate of the University, I have a right to state that this proceeding is something that should not be tolerated, by whomsoever it has been advocated. Let me ask, was the question prepared beforehand? at whose suggestion was this thing done? Why was Mr. Purser called into the Board-room and not asked, Are you a Moravian? do you attend meetings? Why was not his attention called to the canons, which say, "that if any man whatsoever shall separate himself from the communion of the Church, as approved by the Apostles, and combine in a new brotherhood, let him be excommunicated, and not restored until he repent."

Dr. Ball.—That is not in the new canon.

Mr. Butt.—I do not believe in any new canon. Who suggested to the Board the question about the first four Councils? Who picked out this precious interpretation of heresy from the Statutes of Elizabeth ? I care not by whose authority this was done; when I was in this College there were men upon the Board who would have thrust their right hand in the fire before they would call in a candidate for Fellowship, and put to him a question that looks very like a prepared one, to carry out some foregone intention of theirs. The Board say that they have acted upon legal advice. Let them produce the legal opinion. Will they say they did not get legal advice that Mr. Purser was ineligible? When Mr. Purser said to the Provost, "I am not ready to take the declaration," the Board should not have been satisfied to leave the question in doubt; and when Mr. Purser objected to the declaration, and the Provost endeavoured to soften down and smooth away difficulties, and allowed him to leave the room, they must be taken to have elected a man whom they knew would not take the declaration; and if there were nothing more than this in the case, that circumstance would have vitiated the election.

VICE-CHANCELLOR.—The ground put forward and relied on by the Solicitor-General, as the disqualification of Mr. Purser, is, that he is a member of the Moravian Church and not of the Church of Ireland.

Mr. Butt.—An inquiry so momentous as this is not to be met by a special demurrer.

VICE-CHANCELLOR.—True; but where there is an appeal, justice requires that parties should proceed in a formal manner, The Solicitor-General, the leading counsel for Mr. Minchin, in his opening speech, put his case upon this ground—and the invariable rule of the House of Lords is, that the second counsel must confine himself strictly to the opening statement, and not go outside what was opened by his leader.

Mr. Butt.—I am not bound by any rule of that kind in such a case as this.

VICE-CHANCELLOR.—You must then give the other party an opportunity of replying, if you pursue this course.

Mr. Butt.—I may have been warm, but why interpose, and tell me I am transcending my duty. If it is not intended to stop me in my argument, why place me in an invidious position by thus calling me to order? I have referred with profound respect to both of these tribunals—the Board and the Visitors. I have ventured to remind them, that their duty is not limited to what the advocate may bring forward, but to consider whether anything has not been inquired into that requires investigation, and to see that evidence is given which may elucidate any matter at present in doubt. It is your duty to do this, acting conformably to the solemn charge and injunction given you by the founders of this College.

VICE-CHANCELLOR.—I quite agree that we may resort to any necessary measures to ascertain whatever is material to a right decision.

Mr. Butt.—I am not in the habit of wandering from my duty as an advocate. I certainly speak out boldly when my duty demands it, and shall always do so; but whenever the Visitors intimate to me that I am doing what I should not do, such intimation will at once stop me; but at the same time, I must say (as I am reminded by my learned friend, Mr. Murray), that every word of what I have been saying is justified by what is to be found in the Answer of the Board, and is in evidence in the case. I would rather submit to rebuke than appear to cavil; but it is not cavilling to say that all this appears already in the Board's Answer to the Petition. I would like to deal with the case in 32nd Beavan (p. 396), *The Attorney-General* v. *Clifton*. This was also a charitable trust, an endowed school, in connexion with the Church of England; and the Court held that the trustees and the schoolmaster also, if possible, ought to be members of that Church, but the instruction was open to scholars of every religious denomination. The Master of the Rolls in that case said: "As to the schoolmaster, I do not think it is necessary that he should be a member of the

Church of England, though I am of opinion, *cæteris paribus*, that he ought to be a member of that Church; at the same time the trustees would not, in my opinion, commit a breach of trust by appointing a Dissenter to be schoolmaster; but the circumstances must be peculiar to justify it." To what does this case amount beyond this, that a Dissenter might be a schoolmaster without any violation of the trust? Is there anything inconsistent in that case and my proposition, that if you can gather from the whole of the deed that the founder of the school did not intend the schoolmaster should be a Dissenter, he should not have been appointed. The intention, I say, is to be gathered from the whole instrument of foundation. That case does not conflict with the present case. The whole question turns upon the point, what did the founder intend—what was the intention in this case? Take it upon the express words, and it is said that the Provost and Senior Fellows must entertain of the candidate a good hope of him in religion as well as in learning and knowledge. Is it a violent presumption that the religion of the Fellow required in this case is that of the Church of Ireland, and that, as a Moravian and Dissenter, Mr. Purser is disqualified? With regard to the oath or declaration, I say that a man who had an insuperable objection to enter the Church of Ireland would be trifling with his conscience and his oath if he took it.

VICE-CHANCELLOR.—The words are, unless God should thereafter otherwise have inclined his mind or that he should get a lay place.

Mr. Butt.—I have heard of mental equivocation, and mental reservation; but if a person came to me and made such a declaration, and said he would take Holy Orders unless God changed his mind, or he was admitted to the medical profession, I would think he was trifling with his declaration. These are questions of casuistry in which I do not like to meddle; they are questions as to which men entertain different opinions, but I am entitled to argue from the very words in the Statute as to what was the intention of the framers of the oath, and I cannot believe that the intention was to require a Dissenter, who was disinclined to take Holy Orders in the Church, to take it. I am not carrying the matter further. The very fact of asking a person to take Holy Orders shows that it was intended to exclude Dissenters, and no method more decisive could be adopted than to tell a man that he should take Holy Orders. What is a man to do in the meantime? Is he to study Theology? The framer took the most practical course of removing it from the regions of probability, and leaving the question to be decided by a man's self. The oath being prepared, and the man being required to take it, is the greatest proof that the

framer of the oath never designed that it should be required for any one but a member of the Church of England. Since the Reformation the practice has been, not to admit Dissenters. I repeat the proposition with which I started: First, if the founder did not intend that a Dissenter should be admitted to Fellowship, he should not be admitted, and this High Court of Visitation should correct the error into which the Board have fallen.

VICE-CHANCELLOR.—Do you hold that all persons who are not members of the Church of Ireland are inadmissible?

Mr. Butt.—Yes, they are excommunicated.

VICE-CHANCELLOR.—Even those who belong to Colonial or American Churches?

Mr. Butt.—Is not that question easily answered? Take a member of the American or English Churches. If, for instance, a member of the Church of England settled in Dublin, would he go about looking for the body called the Anglican Church; would he not go to his parish Church, and without considering that he was making any change, join himself in communion with the Church of Ireland?

VICE-CHANCELLOR.—You go then outside the limits of the Church of Ireland.

Mr. Butt.—I do not. The man who joins is a member. If, unhappily, in process of time, there were a separation in doctrine and discipline between the members of the Churches of England and Ireland, and persons of the Anglican communion formed themselves into a separate body, like the Greek Church in London, and when they came over here, instead of merging into the general body, formed a separate Church, the question would be, had they merged in or separated from the Church of Ireland?

VICE-CHANCELLOR.—Suppose that Mr. Purser had not any conscientious objections to the Church of Ireland, and agreed to all its essential doctrines, habitually attended the ministrations of the Church, and received the communion administered by it, would you say that because he was a member of the Church of his fathers—the Moravian Church—he was disqualified from being a Fellow?

Mr. Butt.—Let him say at once, I will join the Church of England, and there is an end to the question.

VICE-CHANCELLOR.—Would his merely saying this get over the difficulty?

Mr. Butt.—I think so; but he has not said so.

VICE-CHANCELLOR.—You would require him to transfer allegiance from his own Church to the Church of Ireland?

Mr. Butt.—Most certainly: there is the easiest test in the world: and as he has not done this, he must be regarded as excommunicated.

VICE-CHANCELLOR.—The Church could only convict him of schism.

Mr. Butt.—It could excommunicate him.

VICE-CHANCELLOR.—According to the Test Act, the act of attending in church and receiving the sacrament, in the year before the election, was considered sufficient.

Mr. Butt.—Here there is something else. What could have been easier than for Mr. Purser to have said, "It is true, I have been a Moravian, but in that Church I have not met anything inconsistent with the doctrines of the Church of Ireland; I am now a member, and shall continue to be hereafter a member, of that Church?"

VICE-CHANCELLOR.—It is quite clear that he never intended to forsake his own Church.

Mr. Butt.—Does not that draw a broad line of distinction between this and another Church? Take the case of an American Episcopalian, who looks upon himself as being one with us; would he do what Mr. Purser has done—enter his name as an American Episcopalian in the College Chapel, to exempt himself from communion?

VICE-CHANCELLOR.—Take the case of a Primitive Wesleyan.

Mr. Butt.—That is a peculiar case. The Primitive Wesleyans do not call themselves a Church at all; and it is stated in Dean Hook's work, to which I have referred, that the founder of the Moravians did not make it a fraternity in the Church, but separated wholly from it, and established a Church of his own. When I was in the North of Ireland they did not administer any sacrament in the Presbyterian Church, and I have often known of members to receive the sacrament in the Church of Ireland.

VICE-CHANCELLOR.—I asked you to define what constituted a member of the Church.

Mr. Butt.—I can tell you what *is not*, and when he tells me he is a Moravian, I believe him; and he is not a member of the Church of Ireland.

VICE-CHANCELLOR.—Why was the sacramental test under the Test Act sufficient? When a person does this, he is in some sense presumably a member of the Church, at least in so far as he may belong to the general body of which the Church is a part.

Mr. Butt.—These mysteries do not depend upon Acts of Parliament, and are not to be settled by such principles.

VICE-CHANCELLOR.—They would not trust Dissenters with

an official position, but required as a test that they should receive the Holy Communion according to the rites of the Church. That was considered sufficient.

Mr. Butt.—The law says they must take the sacrament, but it does not say they were members of the Church of England. A pagan might come here, and in utter recklessness take the sacrament, but that would not make him a member of the Church of Ireland. Taking the sacrament would be a *primâ facie* evidence, and if Mr. Purser had not said that he was not a member of the Church of Ireland, the result would have been different.

VICE-CHANCELLOR.—He only says that, by inference; he says he is a member of the Moravian Church, but his doctrines are in accordance with the leading doctrines of the Church of Ireland—that he had received the communion of that Church, and had not any objection to its services.

Mr. Butt.—Could he not have gone a step further, and said, "And, therefore, I regard myself as a member of the Church of Ireland," and there would have been an end of the matter? It is perfectly obvious that he did not do so. The Visitors have the power to give Mr. Purser the opportunity of answering the question now.

VICE-CHANCELLOR.—I have not any right as an inquisitor to sift his conscience.

Mr. Butt.—If I am at liberty to state my own opinion, I would rather there was not any inquisitorial inquiry into a man's opinion; but if a man claim as a Dissenter exemption, and this appears in the books of the College, from duties otherwise imposed, and if it be the intention of the founder that none but the members of the Church of England should become Fellows, I think the Visitors might put to him the question, "Are you a member of the Church of Ireland?"

VICE-CHANCELLOR.—You said that you could not yourself answer that question.

Mr. Butt.—I know that I signed the Census paper as a member of the Church of Ireland, and I hope that I can satisfy myself that in that capacity I rightly affixed my signature to the document. If it be impossible to define what is a member of the Church of England, it is impossible to carry out these trusts. How can it be ascertained in the case of marriages, where the validity of the marriage may depend upon the two being members of the Church of Ireland? It is equally impossible to declare that there is not any test; but if you ask me to explain it, or give an answer, I cannot do so. I am sure everybody knows, and it is quite plain, that Mr. Purser is *not* a member of that Church, be-

cause he has said that he is not. I do not suppose that it is necessary for me to refer to your jurisdiction. You are armed with the very largest powers to carry into effect the intention of the founders. Visitors have gone very far in interfering with the arrangements of the College, to adjust matters when anything has gone wrong. Nothing could be more ample than their powers—nothing more solemn than the obligations imposed upon them. In the language of the Statutes (p. 106)—"Conscientiam verò Visitatorum apud altissimum oneramus, et in visceribus Domini nostri Jesu Christi hortamur ut in faciendo et, exequendo præmissa, solum Deum præ oculis habeant, et ut favore, timore, odio, prece, aut pretio, coloribus, aut occasionibus posthabitis quibuscunque, visitationis, inquisitionis, correctionis, et reformationis, officium, diligenter impendant, et fideliter in omnibus exequantur, sicut coram Deo in ejus extremo judicio in hoc casu voluerint reddere rationem." "On the conscience of the Visitors, in the presence of the Most High, we lay this burden, and in the bowels of our Lord Jesus Christ we exhort them, that in doing and in carrying out the premises they have God alone before their eyes, and that all favour, fear, hatred, prayer, or price, colour, or occasion whatever, being laid aside, they diligently discharge the duty and faithfully in every respect perform the function of Visitation, inquiry, correction, and reformation, as before God at the last judgment they are in this matter to render an account." At the time of the Charter of Elizabeth a Dissenter was not known. There was an Act at the time requiring every one to attend his parish church.

VICE-CHANCELLOR.—A Dissenter had then no legal *status*.

Mr. Butt.—He is completely ignored by the Statute of Charles I. He was ignored by the law of the land, because every one should attend Chapel, receive instructions in the Catechism, and take the sacrament in the College Chapel; therefore the presence of a Dissenter was a thing impossible. By the Statutes of the College that was impossible. This, up to a recent period, was not changed. So far as Dissenters were concerned, they were here upon sufferance. They cannot escape from this. Up to the Statute, when Dissenters were admitted, as Roman Catholics were, though admitted, it was by sufferance. By the Board assuming to themselves a dispensing power they had no legal position in the College. It was not necessary to exclude a man from this College, whose existence was not recognized. How can it be said that Dissenters, before that Statute, were admissible to a Fellowship, and if not, are they made eligible by any other ?—can they be elected to a Fellowship ? The Statutes put him upon the same footing as the Roman Catholics were placed. The judg-

ment of the Assessor in Mr. Heron's case went upon this—though there was not any express law excluding Dissenters, they were virtually excluded, and the Statutes were dispensed with, merely to admit them to take Degrees. Apply this reasoning to the mode adopted here, and you will see that till the other day Dissenters were excluded from the College by the discipline observed. The operation of the Statutes was dispensed with, to allow them to take Degrees; but the rule is, that this dispensation is not to be carried further than it is advisable and necessary, and the Statutes are not dispensed with, to enable Dissenters to obtain Fellowships. A masterly exposition of the law was given by Judge Keatinge, as Assessor, in Mr. Heron's case (9 Ir. Law Rep.) He said that the Statute admitting Roman Catholics to take Degrees did not repeal any old Statute. The Statute requiring attendance in the College Chapel is still in force—it might have been repealed—it is merely dispensed with in favour of Roman Catholics and Dissenters. The construction put by Judge Keatinge on the Statute of George the Third was, that the Statute was repealed, so far as it interfered with admission into the College, or the taking of Degrees, but leaves it in full force as to everything else; and do not the words used in reference to Dissenters say the same thing that had been said in reference to Roman Catholics? This argument is unanswerable, and, therefore, even upon the words of the Statutes themselves, the Church of England, or Church of Ireland, Statutes applicable to this College are still in full force and effect; they bind Mr. Purser to the full extent. They have been relaxed in his favour, so far as admitting him into the College, and permitting him to take Degrees, but no further; and the moment he attempts to use the relaxation for any other purpose, he is in the same position as he would be if no relaxation had taken place at all. I shall now conclude. I must apologize for having so long detained you; the case is one of very great importance: this is my apology. I am exceedingly obliged to you for the patience with which I have been heard by this tribunal; and I may be permitted to say, if in the progress of any part of the case I have shown any undue warmth, it has proceeded alone from my attachment to this old and illustrious University. I would be sorry were it to sink from its ancient dignity and honour; and, instead of drawing more closely round it the robe of truth, suffer it to fall from it. And if this is to be the last sentence ever pronounced by its Visitorial Court, I hope it shall be one likely to maintain the religion for which this University was founded, and by which alone it can hold its high place amongst the Institutions of the land—a place which no University can maintain if it

depart from those religious principles and rules by means of which it became distinguished.

Dr. Ball.—I wish to say a few words. My learned friend, Mr. Butt, has made some observations which he would not have made had he been here upon a former day, and heard what I said upon that occasion. I explained upon that day, that the Board, so far from having anything to do with policy, as regards legislation, or anything else connected with the Statutes, they had scrupulously abstained from taking any part in the matter. They had before them then the conflicting opinions of counsel as to the interpretation of policy, and what guided them was a desire to act according to the letter of the directions laid down. If they had pursued a contrary course, nothing could be attended with more injustice ; because, when they elected Mr. Purser, if he were erroneously chosen, the fullest redress could be given to the other; if they had taken upon themselves to elect Mr. Minchin, they would have deprived Mr. Purser of the possibility of appeal or redress; because, while you may object to a person, upon the ground of disqualification, you cannot, upon the ground of mere answering, object to a thoroughly qualified person. The course adopted by the Board was that most calculated to facilitate and promote justice ; it was strictly in accordance with what they believed to be right, and entirely free from any interposition as to the question of policy. As to this, I did not say a word; I studiously abstained from doing so; and if my learned friend, Mr. Butt, had heard me on the former occasion, he would not have made the observations which have fallen from him—observations which I hope he will withdraw; for, inadvertently, and in the warmth of argument, some expressions escaped from him as to the conduct of the Board, which he will, on consideration, regard as uncalled for and unmerited. The course taken by the Board, I repeat, was to afford his client the most ample justice, and to enable the Visitors the better to decide between the claims of the candidates.

Mr. Butt.—I had not the advantage of having heard my learned friend's address ; I am sure everything which the Board has done, under his sound advice, has been done with the best intentions, but I must say I regret that the question should have now arisen, and that it is a singular and unfortunate coincidence it should crop up just at this moment.

Vice-Chancellor.—It struck me at the moment as you spoke that there was at least one word that need not have been used.

Mr. Butt.—I at once retract anything which seemed to convey that I imputed wrong motives to the Board.

Vice-Chancellor.—In the former case—Mr. Heron's—the

Visitors, assuming that the case would eventually turn upon the legal question, called in Judge Keatinge as Assessor. Upon him, then, the whole duty devolved of considering that question. If the question were one of a more general character, I would have deferred to his Grace the Archbishop, and put him in the foremost ground of the inquiry; but that would not have been fair towards him, where a question of judicial construction arises, as it does here. The course which I propose to take, with the concurrence of his Grace, will be this: In case the Visitors differ in opinion, the Chancellor of the University has the final decision. It mainly involves a judicial question, upon which I do not suppose that his Grace would go through any form of agreeing or differing; so I think that the fairest way would be that, after I shall have made up my mind as a lawyer on the legal question before us, I should send my opinion to Lord Cairns. We have the good fortune to have in him as high an authority upon the case as could be found in the United Kingdom. He is an eminent lawyer, one who is in every way qualified to take a sound judicial view of this important question; therefore it is very satisfactory that we have him to resort to as the final arbiter. If there were no reason for a difference of opinion on the part of the Visitors, still the confirmation of the Chancellor of this University would be highly satisfactory, and especially as, according to my view, it is purely a judicial question, in which the Visitors are bound to see that the intention conveyed in the Charters and Statutes of the College has been or shall be carried out. They have the direction of the founders in reference to the manner in which they should proceed in the discharge of their duties; the rule of interpretation is plainly before them, and they have been placed under an obligation as solemn and sacred as men could be placed under at this side of the grave, to act in accordance with the Statutes of the College, in which that intention has been embodied and expressed.

Archbishop of Dublin.—I wish to add a word that will be rather supplementary to, but not differing with, the observations that have been made by the Vice-Chancellor. If I thought that the matter for our consideration involved what was merely a judicial question, I would simply assent to the judgment, but I am not able to view the question quite in that way. I think there is a Theological question of importance in the matter, and, lest my silence should be misinterpreted, the Vice-Chancellor will not wonder if I take the opportunity of saying what I think upon the subject. I think, in the conclusion at which I shall arrive, there will not be any variance between it and the opinion entertained by the Vice-Chancellor; therefore I shall take the

liberty, however humbly I may execute the task, of making to Lord Cairns my own communication on the subject, and stating to him the result at which I have arrived.

VICE-CHANCELLOR.—If your Grace draws up your views, the communication shall be transmitted, with mine, to Lord Cairns.

ARCHBISHOP OF DUBLIN.—I would not have made such a communication to the Chancellor without first intimating to you that such was my intention; so I felt it necessary to announce it.

VICE-CHANCELLOR.—Quite right, and your Grace may so arrange matters with me, that while I shall avoid theology, you may keep clear of law.

The Visitation was then adjourned.

JUDGMENT

DELIVERED

ON SATURDAY, 6TH JULY, 1872.

THE VICE-CHANCELLOR.—This case was recently argued before us, on three several days, with great ability, by the counsel for the parties concerned, and we are now in a condition to state our opinions upon it, and also to communicate the opinion and decision of the Chancellor of the University, by which we all are bound.

It came before us as the Visitors of the College, on a Petition against the recent election of Mr. Frederick Purser to a Fellowship, on the last Trinity Monday, 27th May. The Petitioners are two of the other Candidates.

There were two vacancies to be filled on the day of election. Mr. Purser was elected to the first, and Mr. M'Cay (another Candidate) was elected to the second. One of the Petitioners (Mr. Minchin) obtained the Madden Premium, as next in order of merit for superior answering at the Fellowship Examination. The Petitioners allege that the election of Mr. Purser was and is null and void, on two distinct grounds; first, that at the time of the election he was a member of the Moravian Church; and next, that on the day after his election he refused to make the Declaration which he was then required to make, as necessary before his admission to the full right of Fellowship. These two grounds I propose to consider separately.

As to the first, the material allegations in the answers of Mr. Purser and of the Provost and Senior Fellows to the Petition are the following:—

Mr. Purser, at the time of the election, was a member of the Protestant Episcopal Church of the United Brethren commonly known as the Moravian Church, which is an ancient Church, and is in accord with the Church of Ireland on all the leading doctrines of the Christian faith: that he did not hold any

opinions that have been adjudged heretical: that he had frequently received the Holy Communion in the Church of Ireland —the last occasion being recently in Belfast, and that he had not any objection to attend the services of the Church. We had nothing before us of which we could take notice, to contradict or qualify any of these allegations. The answer of the Provost and Senior Fellows states that they were advised that Mr. Purser, although a member of the Moravian Church, was not ineligible as a candidate for a Fellowship. He was confessedly first in order of merit at the examination.

As to the form and time of election of Junior Fellows and Scholars, the Statutes of the College direct that after the examination required shall have been finished, the Provost and Senior Fellows shall meet in the Chapel, and the Statutes having been read "de eorum qualitate et electione," together with the Statute "de electionum formâ et tempore," the names of the Candidates shall be publicly recited by the Senior Lecturer, which having been done, each elector shall be sworn and make oath as follows:—

"Ego (A. B.) Deum testor in conscientiâ meâ me Statuta nuper lecta fideliter et integre observaturum, et illos in Socios, &c., nominaturum et electurum quos Statuta nuper lecta significare et apertius describere mea conscientia judicabit, omni illegitimâ affectione, odio, amore et similibus sepositis."

The election is directed to take place on Trinity Monday, and as it is in the nature of a judicial proceeding, the oath of the electors has not been abolished. It is within the exceptions of the 31 and 32 Vict., c. 72. In the absence of impeachment for malversation, miscarriage, or other default, the adjudication of the electors must be taken to be final and conclusive on every matter upon which they were sworn to decide according to their conscientious judgment. This judgment has not been thus impeached, and so far therefore it is to be regarded as in its nature conclusive. In the words of the Lord Chief Justice of England (the late Lord Tenterden)—"If a matter is left to the discretion of any individual or body of men, who are to decide according to their own conscience and judgment, it would be absurd to say that any other tribunal is to inquire into the grounds and reasons upon which they have decided, and whether they have exercised their discretion properly or not. If such a power is given to any one, it is sufficient in common sense for him to say that he has exercised that power according to the best of his judgment."* It was properly admitted by the

* *R.* v. *Mayor of London*, 3 Barn. & Ad. 271.

Solicitor-General, in his clear and candid argument on behalf of the Petitioners, that the adjudication of the electors was conclusive as to every matter and element of choice specified in the Statutes publicly read to them; but he contended that, before and at the time of the election, Mr. Purser was ineligible by reason of a disqualification that was irrespective of these Statutes, and that his election was, therefore, void.

From this it seemed to me that the matter properly in issue before us, as Visitors, was a question not of comparative fitness, but of positive disqualification. If upon the construction of the Charters and Statutes of the College it could be sufficiently shown that Mr. Purser was at the time of his election legally disqualified, as alleged, then it would be our duty to declare his election void. If, on the other hand, it should not appear that he was so disqualified, and if all questions of fitness and preference have been finally decided according to their conscientious judgment, by those who have been appointed for the special purpose by the Founder, it would not be within our competence, as Visitors, to interfere further. What we have to regard is the Founder's intention, as it is set forth in, or plainly to be collected from his words, interpreted according to the rule that he has emphatically prescribed to us :—"juxta planum, communem, literalem et grammaticalem sensum." If we find that, according to the intention thus ascertained, Mr. Purser could not be a Lay Fellow of the College, we would not have to consider any question of fitness or preference; our "dry, simple, naked, duty" (to use the words of Lord Eldon), would be to exclude him "on the ground of that intention."*

It was forcibly and ably urged, on behalf of Mr. Purser, that as the Founder has expressly conferred on the Provost and Senior Fellows the power of electing the Junior Fellows; as he has carefully prescribed the duties of the electors, and required the Statutes in which the specific qualifications and disqualifications are set forth to be read out before the election, and bound them, by solemn oath, to elect the candidates who, according to their conscientious judgment, are most evidently described by these Statutes that had just been read to them, he could not be supposed to have intended that a constructive disqualification should be kept in reserve, sufficient in itself to invalidate an election, however formally conducted on oath, according to his own express and precise direction.

In the Statute that relates to the Provost there is an express provision "that he should be in sacris ordinibus constitutus;" a

* *Attorney-General* v. *Hartley*, 2 Jac. & W. 376.

Professor of, or at least a Bachelor in, Theology. But, in the case of the Junior Fellows, the eligible are described as those "de quorum religione, doctrinâ et moribus, tum Præpositus, tum Socii septem Seniores, spem bonam animis conceperint, quique gradum Baccalaureatus in artibus jam susceperint." The electors are then reminded of their oath, and specially admonished against electing any "qui sit infamiâ notatus, de hæresi convictus, aut moribus et vitæ consuetudine dissolutus, sed eos duntaxàt quos, teste conscientiâ idoneos judicaverint."

It was assumed that the electors had ample means of knowing the religious and moral habits and general character of the Candidates; no special test or rule is prescribed to fetter them in forming a responsible opinion as to these elements of fitness; this is left to their conscientious judgment. As to learning, that was to be tested by the examination prescribed by the Statutes.

It may be quite true that in the time of Queen Elizabeth or of King Charles I. it was not contemplated that Nonconformists or Dissenters should thereafter have a legal status; and the exclusion effected from the first by the Parliamentary enactments that required and compelled conformity, made it not necessary to introduce words of exclusion into the Charters and Statutes of the College, with a view of excluding those who were already excluded by the law of the land. But the last of the provisions of this law of exclusion was repealed by the 15th section of the Clerical Subscription Act of 1865 (28th & 29th Vict. c. 122). It repealed the 5th section of the 17th and 18th Car. 2 (Ir.) cap. 6, by which Fellows of any College were obliged to subscribe the Declaration of conformity to the Liturgy as by law established, under the penalty of a forfeiture of their Fellowship, that could not be dispensed with by the Crown, as it was imposed by Act of Parliament. The barrier erected by the Legislature having been thus removed in 1865, the only question with which we have now to deal is this, whether there is any such barrier to be found in the Statutes of the College, as they now exist?

It is material to observe that, in the Letters Patent of Charles I., the Statutes ordained by him were declared to be obligatory, "nisi pro temporum ratione visum erit nobis vel successoribus nostris, aliquid adjicere, tollere, vel mutare, aut in aliquibus dispensare non obstantibus hisce Statutis nostris." In pursuance of this provident reservation, alterations and dispensations were made from time to time by the Sovereign for the time being, and when so made became incorporated into the original foundation.* In the

* *R.* v. *Bishop of Worcester*, 4 M. & S. 420.

year 1855 the then existing Statutes were deliberately revised, with a view to abrogate whatever was found to be obsolete, impracticable, or inconvenient, and to make such amendments as were considered to be adapted to the altered circumstances—"pro temporum ratione"—and it was enacted that the Statutes thus revised should be digested in due order, and printed in one continuous code, for the use of the members of the College. This was carried into effect in the same year by the publication of the volume that was edited by the present Provost.

Taking the Charters and Statutes as they stand thus revised, and constitute the Foundation Code of the College, the trusts may be divided into three classes—Ecclesiastical, Educational, and Eleemosynary. The Ecclesiastical trusts are connected with the Church of Ireland; the Educational with the laity in general; and the Eleemosynary are more or less connected with each of the other two.

Provost Bedell, to whom we are mainly indebted for the groundwork of the Caroline Code, had suggested to Archbishop Ussher that it was desirable to make the College something better than a mere seminary for the clergy, and that it would be an advantage to the country to encourage the Faculties of Law and Medicine. Two lay places were provided, one for the Profession of Medicine, the other for the Profession of Law. But all the Fellows, except the two who were appointed to these places, were bound to take Holy Orders within three years from the taking of the Degree of Master of Arts, under the penalty of amotion from the College. This provision was altered in the new code so as to extend the exception of Lay Fellows to five, exclusive of those who had got special dispensations. The time when Holy Orders were to be taken is altered. It is to take place "within three years from the day of election, or six months after the attainment of the canonical age." I take the words, "sacrum presbyteratus ordinem," to mean Holy Orders (generally); on the authority of Lord Cottenham's decision in the case of *University College, Oxford.** The Declaration (formerly an Oath), that the elected Fellow is required to make after election, and before admission, contains these words—"Studiorum finis erit mihi theologiæ Professio, ut ecclesiæ Dei prodesse possim, nisi aliter Deus mentem meam deinceps inclinaverit, aut nisi in numerum eorum quibus per Statuta liceat alia studia amplecti, nominatus et electus fuero." Great reliance has been placed on the effect of these words, which are said to indicate the intention of the Founder to exclude all who, at the time

* 2 Phill. Ch. Rep. 524.

of the making of the Declaration, had not any intention of making theology their profession, or of taking Holy Orders afterwards. It was forcibly argued that such could not conscientiously make the Declaration, and that as confessedly Mr. Purser was one of this class, he was therefore ineligible.

In the present state of the College, with its revised Foundation Code, its expanded and liberal system of education, available to all the students of every religious denomination, without any manner of interference with the rights of conscience, it is of great importance not to place in the way of Candidates for Lay Fellowship, any impediment that is not required by the Code as it now stands. The interests of the Church are secured by the provision that, at the end of the prescribed triennial period, every elected Fellow should take Holy Orders, unless in two classes of cases; and those who come within either class are excepted from the rule as to the profession of theology. If either God should otherwise thereafter have disposed their minds, *or* that they should have been appointed to Lay places, the obligation of making theology their profession does not apply. There are two of the present Senior Fellows who are distinguished Laymen, and never had an intention of making theology their profession, nor of taking orders; there are several similarly circumstanced among the Junior Fellows, and such has been the case in times past Is it to be supposed that all of these, when taking the Fellows' oath, considered themselves bound to have then an intention of making theology their profession? Did they not, in most instances at least, look to other professions, to lay places, or to dispensations if necessary to secure the enjoyment of rights and privileges which they had meritoriously won?

Such has been the generally accepted meaning of the oath. There is but the one form of oath, and it contains clauses that are inapplicable and inoperative in some of the cases in which it must have been intended to be taken as a whole. Thus, there is one clause as to not having a benefice, that is beyond question exclusively applicable to those who at the time were in Holy Orders. The clause as to the profession of theology is appropriate to those who were or intended to be in Holy Orders; who, as they were not to have benefices or cures, were required to make the profession of theology their "finis studiorum," in order that they might profit the Church of God, of which the Church of Ireland was and is an integral part. But it could have no reasonable application to those who had either already chosen the profession of Law or of Medicine, or to those who looked forward to the contingency of getting a lay position by lawful means

(including a dispensation),* and were prepared, if necessary, to give up their Fellowship at the appointed time. Such would come within the second clause of exception, if not within the first; and if within either, they would not be within the rule.

There was nothing known to the Board that, in my opinion, ought to have led them to conclude that Mr. Purser could not conscientiously make the Declaration at the proper time; and, therefore, so far as this was a matter for their consideration before or at the time of the election, I see no reason to differ from them in the opinion which they then entertained.

Is there, then, in the Code, as it now exists, anything that plainly indicates the intention of excluding Mr. Purser from being eligible for a Lay Fellowship? According to the view of Lord Eldon, the Founder's intention that would justify removal (and it was conceded in the argument in this case that removal and exclusion stand on the same ground)—"the intention must be clearly manifested." It was not enough (he thought) to show that the event of admission was not contemplated by the Founder, unless it was further shown that there was an intention to exclude.†

The revised Code has added an express exception of those persons who are not subjects of the Crown. The words that describe the eligible are not otherwise qualified, than that "Graduates in Arts" include those who could not in the earlier period have obtained a Degree. The words of the Statutes, as they stand in the existing Code, must have their full general effect given to them, when taken in their plain, literal, and grammatical sense, save so far as this would be inconsistent with the plain intent of the whole, or with any exception expressed. The words of an enactment, if sufficient to include, are to be taken as applicable, not only to a class of persons who were recognised at the time of its passing, but also to those who, by any lawful means, shall afterwards have become such as are described. This was laid down by Baron Alderson, as the effect of the rule of literal and grammatical construction, such as we are specially bound to follow in the present case; and as to the argument that the subsequent class could not have been in the contemplation of the Legislature, Lord Abinger answered that he could not enter into that, "because they had not stated what they contemplated."‡

* See 2 Phill. Ch. Rep. 528, and *ante*, p. 114.

† *Attorney-General* v. *Hartley*, 2 J. & W. 376. See also *Kemp* v. *Wickes*, 3 Phill. Eccl. Rep. 295.

‡ *Attorney-General* v. *Lockwood*, 9 M. & W., 395, 399).

It is not denied, that in the earlier Code of the College, the supply of an educated ministry for the good of the Church then established was a main, though not the exclusive purpose, of the Founders; and it is not less certain that in the later Code, as revised and re-settled, the provision for making liberal education available to the laity of all denominations was a main, though not the exclusive, purpose. The stand-point has been shifted. The Educational trusts have been brought into prominence. The Lay Fellows have now no duty imposed on them, by the Statutes as they stand, which Mr. Purser was presumably unfit conscientiously to discharge. This was a matter on which the electors had ample means of forming, and were bound to form a responsible judgment, and we must now take it that upon this they were satisfied. He was elected to fill the first vacancy, as having proved himself to be the best qualified for the educational duties that he would be required to discharge as a Lay Fellow. We cannot review and reverse the adjudication of the electors on his superior fitness.

Mr. Butt earnestly contended that we were to look only at the intention of the Founders, and that according to the decisions of Courts of Equity, in cases of Charitable Trusts, we were bound to see that this intention should prevail; and he followed this up by the assertion, that in order to effectuate this intention in the present case, Mr. Purser must be regarded as not eligible. But in the case of *Baker* v. *Lee*,* with which Mr. Butt so vigorously grappled, Lord Chelmsford observes that "the word 'eligible' is ambiguous. It may mean either legally qualified or fit to be chosen. Now" (he adds), "it possibly may be the case that from the absence of words of exclusion in the foundation deed there may be no express absolute disqualification of Dissenters for the trust, and therefore if they should happen upon any occasion to be appointed, there may be no sufficient ground for removing them." The Lord Chancellor in the same case lays it down distinctly that whilst he admitted that the foundation was Church of England, and the religion to be taught was to be the Established Protestant Religion, the not being a member of the Church was not an absolute disqualification. Lord Cranworth said, that he knew of no law making the selection of a member of the Church of England imperative on the Court, however proper it might appear *primâ facie* that such should be selected. This statement of the law was not controverted by the final decision of the House of Lords, and accordingly, in the subsequent

* 8 H. of L. C. 495.

case of *The Attorney-General* v. *Clifton*,* relating to the case of a Church of England school founded by a member of that Church in 1601, the Master of the Rolls held that it was not absolutely necessary, although, *cæteris paribus*, it would be proper that the master should be a member of the Church of England.

Now, it is to be observed that the question arising in these cases, where there were not words of distinct disqualification in the instrument of foundation, was dealt with as raising an issue not of legal disability, but of judicial discretion, to be responsibly exercised, and to be finally decided (if necessary) by the House of Lords, as the Supreme Court of Equity.† But if I have not misunderstood the intention of the Founder in the present case, it was not his intention to confer on the Visitors the exercise of a discretion such as was confided to the Provost and Senior Fellows, to be executed in the manner to which I have adverted, and subject only to the supervision that I have already explained. This special delegation of exclusive authority, and the mode in which it was to be exercised, distinguishes this case from those in which a Court of Equity acts according to a rule of judicial discretion, and is subject to the correction of a Superior Court of Equity. There is one case, *R.* v. *Bishop of Ely*‡ (who was the Visitor of Peterhouse College, Cambridge), in which there was a somewhat similar power given to a select body of electors under the terms of a College Statute, and the sanction of an oath; and Mr. Justice Ashurst says:—"The intention of the persons who gave this Statute evidently appears from this to have been that the Fellows should judge of the fitness of the respective Candidates, they being supposed to be more conversant with their qualities than the Bishop who resided at a distance; and for that reason it might be proper to repose such a confidence in them. And every precaution has been taken that the Fellows shall not elect any but those who are proper, by obliging them to take a solemn oath not to nominate any person out of favour or affection."§

I am clearly of opinion that the Founder's intention in the present case was to make the adjudication of the electors final and conclusive on the question of fitness, subject to correction only in case of an abuse or a misuse of the power thus conferred, or of some default or miscarriage that would amount to a breach of trust or a failure of duty on their part. But where the power confided to them has been confessedly executed in good faith and good conscience, the interference of the Visitors is excluded.

If indeed it had been shown that there was a disqualification

* 32 Beav. 599.
† See *Shore* v. *Wilson*, 9 Cl. & Fin. 416 and 581.
‡ 2 T. R. 290.
§ Page 336.

distinctly imposed, irrespective of the adjudication of the electors, the duty of the Visitors would be to give effect to it, by declaring the election of a person so disqualified to be null and void; not because of any default or miscarriage of the electors, but by reason of an absolute disability.

The electors having completed the election on Trinity Monday, according to their oath and the directions of the Founder, Mr. Purser, who was not then disqualified, was duly elected, nominated, and constituted, to be a Junior Fellow, to fill up the vacant place. According to the Charter of King Charles I. (Vol. I., p. 21), "Sic electus habeat et gaudeat ac habere et gaudere valeat et possit, adeo plenam et liberam potestatem auctoritatemque, in omnibus et per omnia et ad omnia et singula, agenda, perimplenda et exigenda prout aliquis Sociorum Juniorum, dicti Collegii pro tempore existentium quovis modo habere seu gaudere debeant aut possint, juxta tenorem prædictorum Statutorum nostrorum in hoc casu designatorum." If more could be required to show that the vacant place was filled up by the election on Trinity Monday, it may be found in cap. xxi., p. 85; and especially in the Royal Letter of 48 Geo. III., p. 239. The question of alleged disqualification in this case, which the electors were neither sworn nor called upon to decide, was left (and properly left) to be decided by the Visitors, and this is the question upon which I have now given my opinion.

It is not necessary to advert to what occurred between Mr. Purser and the Board before the election; but, although I am satisfied that what was done on the part of the Board was *ex abundanti cautelâ*, and with a view to prevent any miscarriage under the novel circumstances in which they were placed, I should not wish to see this drawn into a precedent hereafter. There was no charge of holding any heretical opinion made or suggested against Mr. Purser, and there was nothing to require that he should then purge himself of an imaginary imputation. The standard of heresy, to which reference was then made, was (doubtless) recognised as lawful and proper, shortly before and at the date of the Caroline Statutes, as may be seen in Sir Edward Coke's Reports, Part xii., p. 56. But, whether we take heresy in this sense, or in the simpler sense of Chillingworth, that has been adopted by Chief Baron Comyns—"a doctrine repugnant to some Article of the Christian faith"—there was not the slightest pretext for imputing heresy to Mr. Purser. Nothing of the kind has been put forward or suggested in the Petition against his election.

It is not open to us to speculate on what may have been con-

templated by those who advised or those who completed the Statutes, in not requiring more in the case of a Fellow, during the lay period at least, than was necessary to secure Protestant orthodoxy, otherwise it would not be difficult, having regard to the circumstances of the times and of the country, to suggest probable reasons for such a policy. It invited and encouraged Protestant students who disputed not the doctrine of the Church, although they might not have been members of it in the common acceptation of the word, which Mr. Butt confessed himself unable more precisely to define. It enabled them by industry and talent, and without a compromise of conscience, honourably to win Fellowships, and in some instances they have adopted the profession of Theology, and have taken Holy Orders in the Church.

In one of the cases cited by the Solicitor-General for another purpose, the Master of the Rolls (Sir T. Plumer), when deciding that the children of Protestant parents (not members of the Church of England) were admissible to the benefit of a school settled on a Church of England foundation, observes—"It is the same at the Universities and public schools, Protestants being admitted without inquiring what particular sects they may be of."* I adverted during the argument to the English Statute of 13 Eliz. c. 12, A. D. 1570 (before the date of her Charter), in which provision was made for securing "Pastors of sound religion," to serve the Churches of the Queen's dominions, by requiring such as had not been ordained according to the form prescribed for the Church of England "to declare their assent and subscribe to all the Articles of religion which only concern the confession of the true Christian Faith and the doctrine of the Sacraments." This is significant of what was meant by "Religion" in the Charter of Elizabeth. In the celebrated letter from Bishop Cosin to M. Cordel at Blois, bearing date the 7th February, 1650 (Cosin's Works, Vol. iv., 401), that learned and eminent prelate observes—"Therefore if at any time a minister so ordained in these French Churches came to incorporate himself in ours, and to receive a public charge or cure of souls among us in the Church of England (as I have known some of them to have so done of late, and can instance in many other before my time), our Bishops did not re-ordain him before they admitted to his charge as they would have done if his former ordination here in France had been void. Nor did our laws require more of him than to declare his public consent

* *Attorney-General* v. *Dean of Christ Church*, Jac. Rep., 489.

to the religion received amongst us, and to subscribe the Articles established."

In p. 405 he says:—"If upon this ground we renounce the French, we must, for the very same reason, renounce all the ministers of Germany besides (for the superintendents that make and ordain ministers there have no new ordination beyond their own presbytery at all), and then what will become of the Protestant party? If the Church and kingdom of England have acknowledged them as they did in admitting of them when they fled thither for refuge, and placing them by public authority in divers of the most eminent cities among us, without prohibiting to any of our people to go and communicate with them, why should we, that are but private persons, utterly disclaim their communion in their own country?"

He further writes to his friend that, as there was no prohibition of our Church against it, "I do not see but that both you and others that are with you may, either in case of necessity when you cannot have the Sacrament among yourselves, or in regard of declaring your unity in professing the same religion which you and they do, go otherwhiles to communicate reverently with them of the French Church" (p. 407).

By "Religion" this distinguished prelate (who may be regarded as an exponent of the views of those who were mainly engaged in settling the Caroline Code of Statutes for this College) plainly meant here the Protestant religion, professed by Orthodox Reformed Churches, and established in the Church of England. Under the Caroline Code of the College no religious test was prescribed beyond what was furnished by the attendance of resident students at Chapel, and by the oath to be taken on or before election. It was usual, however, for Candidates for Fellowship or Scholarship to partake of Holy Communion in the College Chapel on Trinity Sunday. Upon what other principle could the taking of the Sacrament according to the rites of the Church, within a year before election to certain offices, have been required under the Test Act, than that it was held to testify in the most solemn manner the profession of the same Protestant religion that was established by law? By the weighty words of that sublime service of our Church, those who have duly received these holy mysteries are assured thereby "that they are very members incorporate in the mystical body of Christ, which is the blessed company of all faithful people." In this, the deepest and truest sense, those who rightly, worthily, and with faith receive the Holy Communion in the Church of Ireland are (as it were) members by the most solemn act of incorporation, however defective

may be their title to membership in a sense which Mr. Butt confessed that he could not define. His alleged rule of exclusion would exclude all who belong to any Church other than the Church of Ireland; even the Church of England itself might hereafter be shut out, and all the Churches of the Anglican Communion—to say nothing of the Church of Scotland and the congregations of its Communion in Ireland, as also the Wesleyan Connexion.

It is not enough (according to this rule) that the Candidate assents to the authorized doctrine of the Church, that he has not any conscientious objection to its services, and is a willing communicant; unless he also finally abandons the Church of his fathers, and then formally transfers himself to the Church of Ireland, he is absolutely disqualified to be a Lay Fellow. I have not been able to come to this conclusion.

I now come to the second point, i. e. as to the effect of what took place on the day after the election. The material allegations are in the Answer of Mr. Purser to the Petition of Messrs. Minchin and Panton. He says that on the 28th May, 1872, he attended in the College Chapel, in obedience to the summons of the Board, and when required by the Provost to make the Declaration prescribed by the Statutes of the College, he stated he could not conscientiously do so; and, thereupon, the Provost refused to admit him to the Fellowship. He states that his objections to making the said Declaration were not due to any peculiar doctrines or tenets of the Church to which he belongs, but might, in his opinion, exist equally in all cases where a person elected to a Fellowship in the said College had no intention or desire to devote himself to the study of Theology, or to enter Holy Orders. He submits that the making of the Declaration was not essential to his admission to the full rights of a Junior Fellowship of the said College.

In his cross Petition he states, that on the 27th May, after the declaration of the result of the election, he presented a memorial to the Provost and Senior Fellows, stating that he could not conscientiously take the oath prescribed for the Fellows by the Statutes of the College, and that it was his intention to apply to Her Majesty the Queen to relieve him by a Royal Letter from the necessity of taking the said oath; and praying that he might be admitted to the full rights of a Fellow, and that the time for taking the said oath might be postponed until he had made such application as aforesaid, or that both the admission to the full rights of a Fellow and the taking of the oath might be postponed until the said application had been made. He submits that he is now entitled to be admitted to the full

rights of the Fellowship to which he was elected, and prays that we shall direct that he may now be admitted to such rights.

The Statutes expressly direct that the admission of the elected Fellow should take place in the Chapel on the day after his election. The making of the "Declaratio Socii" is a part (and I think an essential part) of the ceremony of admission, which is to take place in the presence of all the Fellows, who attend upon summons for the purpose, and thereupon the elected Fellow is admitted "in plenum jus junioris Socii, et deinceps percipiat ea commoda et fructus qui hujusmodi Sociis ex statutis præscribuntur." The Declaration (formerly an Oath) is the ultimate test of the qualification required for the office, both as indicating the religious faith of the party, and furnishing a security by his solemn promise of obedience and fidelity in the discharge of the duties of his office. Under the Act for the Abolition of Promissory Oaths (31 & 32 Vict. c. 72, s. 12, cl. 3), a Declaration was substituted for an Oath, in the cases in which it was "a condition of admission to Fellowship or to participation in the privileges" thereof. In fact, the making of this Declaration was the first duty that the newly elected Fellow was bound to discharge, so that all subsequent duties should be performed under its solemn sanction. It is plain, therefore, that the making of it was and is an essential part of the ceremony of admission. By the Statute of Charles I., amended by the 18th Victoria, any Fellow who, after his election, shall refuse to take the oath prescribed to his order, shall forfeit (*amittat*), *ipso facto*, his jus Societatis. Whether the original clause, as it stood in the Statute of Charles I. was applicable only to the Fellows then existing, or had a wider traditional meaning when the clause was amended by the Statute of Victoria, is not now material, inasmuch as the clause so amended stands confirmed in the revised and authorised Code, and must be taken in its plain, literal, and grammatical sense. I was at first disposed to think that there had not been so unqualified a refusal to make the Declaration as to incur the penalty of forfeiture, but, on full consideration, I am now satisfied that there has been such a refusal. When Mr. Purser made the first objection to the Declaration, on hearing the Provost's explanation he seemed disposed not to press his objection; his second objection was also met by the Provost with a like indulgent consideration, and an opportunity was offered to him to attend and make the Declaration at a later hour on the Tuesday, of which he did not avail himself. The Board acted according to their duty in not giving any further indulgence. The consequence therefore was, that he forfeited the "jus Societatis" which he had acquired by the election on the previous day. The election

was not made void,* but the Fellowship was vacated by forfeiture on Tuesday, and therefore can only be filled up by an election on Trinity Monday in the next year. He does not state in his Answer, or in his cross Petition that he was or is willing to make the Declaration; on the contrary, he contends that it is not essential to admission, and claims to be admitted without having made it. It could not have been anticipated that any one would offer himself as a Candidate who had not made up his mind to make the Declaration prescribed to every elected Fellow, nor could it have been contemplated that the propriety of making or not making it was a subject which required further time for consideration.† It was for the electors to consider, before the election, whether the Declaration was intended to exclude any class, of which he was one; but it was a matter for his own conscience to decide whether he would make the Declaration, when elected. I have already stated that I consider the generally accepted meaning of the Oath or Declaration to be its true meaning, but if Mr. Purser, when he took the matter into his own hands, could not get his conscience out of the difficulty that he created by his private interpretation, he must abide the consequences from which we have not the power to relieve him.

His cross Petition ought therefore (in my opinion), to be dismissed. The course he has pursued, by leaving over to the last the settlement of the question, which plainly ought to have been settled by himself at the beginning, has placed the Board in a position that causes grave inconvenience to the College, and works a great injustice, especially to Mr. Minchin. By means of this Visitation the important question of eligibility will be decided; but it was essential to the case of the two Petitioners to nullify the election as void *ab initio*, and in this I think they have failed, and therefore (as for other reasons) that their Petition must be dismissed.

I have stated the conclusions at which I have arrived, after the most careful consideration and research I could bestow; and in duty to the Bar, by whom we have been so ably assisted, I have given the reasons by which I have been led to these conclusions.

His Grace the Archbishop of Dublin said—By the courtesy of the Vice-Chancellor I have had the opportunity of becoming acquainted with his opinion and that of the Chancellor on the various points which the Petition of George M. Minchin

* See the converse in Wilmot's Notes, p. 146.
† *Humphreys* v. *The Queen*, 10 Ad. & Ell. 369.

and Arthur W. Panton, with the Answer thereto, and also the Petition of Frederick Purser, have raised.

I entirely concur with the conclusion at which both have arrived, namely, that Mr. Purser is not a Fellow of Trinity College. Whether Mr. Purser ever possessed even the inchoate rights of a Fellow is a question which, however important its bearing on the interests of the Appellants, no opinion of mine would affect, and on which, therefore, I do not feel it necessary to offer any opinion.

VICE-CHANCELLOR.—I will now read the opinion and decision of Lord Cairns, the Chancellor of the University.

London, 27th June, 1872.

I have carefully considered the Petition of George M. Minchin, M. A., and Arthur W. Panton, M. A., and the Answers thereto of the Provost and Senior Fellows, and of Frederick Purser, and also the Petition and the Case of the said Frederick Purser, and I have been furnished with and have read the shorthand writer's notes of the arguments of Counsel at the recent Visitation held to consider the said Petition, Answers, and Case.

The questions raised by the said Petitions, and upon which I propose to express my opinion, are the following :—

First—Whether the said Frederick Purser was duly elected a Fellow of the College at the election on Trinity Monday, the 27th May, 1872?

Second—Whether the said Frederick Purser is now entitled to be admitted to the said Fellowship?

On the first question, I am of opinion that the said Frederick Purser was duly elected a Fellow of the College on Trinity Monday, the 27th of May, 1872. It is not disputed that he was duly elected if he was eligible. He did not labour under any of the grounds of disqualification specified in the Statutes; and beyond the grounds so specified everything is, in my opinion, left, under the Statutes, to be regulated by a conscientious exercise of discretion (on the part of the electors) as to fitness, and by a conscientious scrupulousness (on the part of the Candidates) as to the duties to be performed and the declarations or tests to be made or submitted to.

On the second question, I find that on the morning of Tuesday, the 28th May, when, according to the Statutes, the said Frederick Purser ought to have been solemnly and publicly ad-

mitted to the Fellowship to which he had been elected, he attended at the Chapel of the College, and that when the "Declaratio Socii" was tendered to him, he stated that he could not conscientiously make the declaration, and declined then to make it.

I have considered carefully the provisions of the Statutes which appear to me to bear upon this state of circumstances, and more particularly those noted at foot,* and I am of opinion that the following conclusions must be drawn from them, viz.:

1. That a declaration (formerly an oath) in the form prescribed, is to be taken by every person elected.

2. That this declaration is to be made on election, before admission, in like manner as has been the custom in the College (with regard to the oath).

3. That the time for admission of a Fellow, elected on Trinity Monday, is on the following morning, and this is therefore the time for making the declaration.

4. That a Fellow who refuses to make the declaration, at the time and in the manner prescribed, loses his *jus Societatis* or Fellowship.

Applying these conclusions, I am compelled to hold, and do hold and decide that the said Frederick Purser having, under the circumstances stated, refused to make the prescribed declaration, is not now entitled to be admitted to the Fellowship to which on the 27th of May, 1872, he was elected, but that the said Frederick Purser has lost the said Fellowship, and that the said Fellowship is now vacant.

CAIRNS,

Chancellor of the University of Dublin.

THE VICE-CHANCELLOR (after the reading of the opinion of the Chancellor of the University).—The question which now alone remains has reference to the costs of these proceedings. We have, to guide us in determining this point, an authoritative precedent left by Lord Eldon, in his capacity of Visitor (*Queen's College, Cambridge, case*, Jacob's Reports, p. 1), a case in which two Petitions were presented to him, and both of which he dismissed; but, inasmuch as the case involved questions of general importance and interest to the College, he directed the costs to be paid out of the College funds. Doubtless, the main question the case that has been at argument before us is one

* Charter 13 Chas. I. Mac D. St. vol. i., p. 17. Charter 10 Chas. I. Mac D. St. vol. i., p. 25. Letter Pat. 13 Chas. I., cap. viii.; Ib. p. 41. Lett. Pat. 52 Geo. 3, Mac D. St. vol. i. p. 246. Lett. Pat. 18 Vict., Mac D. St., vol. ii., p. 67.

which, however it may be viewed by the parties concerned, is of like importance and interest to Trinity College to have finally decided. The result of the Visitation, the time occupied in the discussion, and the nature of the question as regarded the College, led Lord Eldon to the opinion that, while he dismissed the Petitions in the case before him, he was justified in directing that the costs of the parties should be defrayed out of the funds of the College. I would be very sorry that the Petitioners in the present case should, under the circumstances, be obliged to bear the costs which they have incurred, especially Mr. Minchin, who has been placed, by the course taken by Mr. Purser, in a very exceptional position. Had Mr. Purser, before he offered himself as a Candidate, made his mind up as to the course he would pursue with reference to the Declaration, Mr. Minchin might have been placed in a different position to that in which he has been placed. I regret that he should have been prejudiced by this circumstance: therefore, my opinion is, in which his Grace the Archbishop of Dublin entirely concurs, that the costs of the proceedings on the Petition of Messrs. Minchin and Panton should be defrayed by the College. In this view we are fortified by the decision of Lord Eldon. I do not anticipate that there will be any difficulty with the Board of the College in giving effect to our ruling as regards the costs. I shall merely add, in concluding this Visitation, that we (the Visitors) have great pleasure in acknowledging the cordiality with which all engaged in this investigation have co-operated with us, and the able assistance afforded by the learned counsel at both sides, in the manner in which they have argued the case, and the learning and research which they have exhibited.

DECREE.

THE COURT OF THE VISITORS OF THE COLLEGE OF THE HOLY AND UNDIVIDED TRINITY, OF QUEEN ELIZABETH, NEAR DUBLIN

In the Matter of the Petition of GEORGE M. MINCHIN, M. A., *and* ARTHUR W. PANTON, M. A. *And in the Matter of the Petition of* FREDERICK PURSER. *And in the Matter of the Visitation of the said College, held on the* 11*th*, 15*th*, *and* 18*th days of June, and the* 6*th day of July, in the year of our Lord* 1872.

WHEREAS, on the 1st day of June, in the year of our Lord 1872, George M. Minchin and Arthur W. Panton, Masters of Arts of the University of Dublin, presented a Petition to the Right Honourable Hugh M'Calmont Baron Cairns, and the Right Honourable and Most Reverend Richard Chenevix, Lord Archbishop of Dublin, as Visitors of the College of the Holy and Undivided Trinity, of Queen Elizabeth, near Dublin; in which Petition, amongst other things, they stated and showed to the said Visitors that on and prior to the 13th of May, 1872, two of the Fellowships of the said College were vacant, and that an Examination was duly held for the purpose of selecting two out of the eligible candidates for the said Fellowships, and that the Petitioners presented themselves as candidates at the said Examination, being members of the Church of Ireland, theretofore by law established; and that one Frederick Purser also presented himself as a candidate at the said Examination, whom the Petitioners alleged to be a member of the Moravian Church, by reason whereof the said Petitioners submitted that he was ineligible as such candidate as aforesaid; and also therein showed and stated that in and previous to the election to the said Fellowship, the said Petitioners had duly apprised the Provost and Senior Fellows of the said College that the said Frederick Purser was a member of the Moravian Church, as aforesaid, and that, in case he should be elected to one of the said Fellowships, such election would be null and void: And further stated that on Monday,

the 27th of May, 1872, being Trinity Monday of that year, the said Provost and Senior Fellows elected the said Frederick Purser to one of the said Fellowships, and elected one William M'Kay to the other of the said Fellowships, and awarded the "Madden" Premium to the said George M. Minchin; and further, that upon the following day, being Tuesday, the 28th of May, 1872, the said Frederick Purser, having been lawfully required to make the Declaration substituted by the Promissory Oaths Acts, instead of the Oath prescribed by the Statutes of the said College, to be taken by every newly-elected Fellow previous to his admission to the full rights of a Junior Fellow of the said College, refused to make and did not make the same; and that, accordingly, he was not admitted to the full rights aforesaid: and the Petitioners prayed the said Visitors to hold a Visitation in the said College, to inquire into the matters aforesaid, and to declare that the said George M. Minchin was, under the circumstances, elected to one of the said "Fellowships," and to direct the said Provost and Senior Fellows duly to admit him to the same, or to direct them to elect and admit him to the said vacant Fellowship; or for such other direction as should seem to the Visitors right: And whereas the said Provost and Senior Fellows presented to the said Visitors a case by way of Answer to the said Petition, wherein they stated the several proceedings in reference to the aforesaid election to the said Fellowship, and, among other things, that they were advised that the said Frederick Purser, although a member of the Moravian Church, was not ineligible as a candidate at the Examination for Fellowships in the said College: And whereas the said Frederick Purser also presented to the said Visitors a case by way of Answer to the said Petition, submitting that his election by the said Provost and Senior Fellows to the said Fellowship was conclusive, that he was legally qualified to be a Fellow of the said College, and further submitting that the making of the said Declaration was not essential to his admission to his full rights of a Junior Fellow of the said College, and submitting that he was duly elected a Fellow of the said College, and that the said George M. Minchin had no claim or right to be elected or admitted to a Fellowship in the said College: And whereas the said Frederick Purser afterwards presented a Petition to the said Visitors, by way of Cross Petition, and thereby prayed their Lordships to hold a Visitation in the said College, to inquire into the matters therein alleged, as aforesaid, and to declare that he was duly elected a Fellow of the said College, and to direct that he might then be duly admitted to the full rights of the said Fellowship: whereupon the Right Honourable Sir Joseph Napier, Bart., Vice-

Chancellor of the University, and the Right Honourable and Most Reverend Richard Chenevix, Archbishop of Dublin, the Visitors for the time being of the said College (the Right Honourable Hugh M'Calmont Baron Cairns, the Chancellor of the said University, being absent) did, as such Visitors, order all parties to attend before them in the said College, in the matter of both of the said Petitions, on the 11th day of June last; and the said Petitions coming on to be heard and debated before the said Visitors, as aforesaid, on the 11th, 15th, and 18th days of June, aforesaid, in the presence of Her Majesty's Solicitor-General for Ireland, with Isaac Butt, LL.D., one of Her Majesty's Counsel, and John Murray, of Counsel with the said George M. Minchin and Arthur W. Panton, and of Hewitt Poole Jellett, one of Her Majesty's Counsel, with Edmond T. Bewley, of Counsel with the said Frederick Purser, and of The Right Honourable John Thomas Ball, LL.D., one of Her Majesty's Counsel, with Charles Henry Tandy, one of Her Majesty's Counsel, and Thomas E. Webb, LL.D., of Counsel with the said Provost and Senior Fellows, and the matter of the said Petitions having been opened and debated before the said Visitors: And the said Visitors upon due consideration of the matters contained in the said Petitions, and cases by way of Answer, and of the Charters and Statutes of the said College, and of what was stated by the said Counsel, differing in opinion between themselves upon a controverted matter touching the matters contained in the said Petitions and cases, and the opinions of the said Visitors respectively having been communicated to the Chancellor of the University, and the matters contained in the said Petitions and cases, Charters and Statutes, and also a correct report of what had been so stated by the said Counsel, as aforesaid, having been laid before and considered by the said Chancellor, and the said Chancellor being of the opinion expressed in the following Declaration, It is adjudged, determined, and declared, that the election of the said Frederick Purser was valid, and that he was duly elected, nominated, and constituted a Fellow of the said College upon Trinity Monday, 1872; but it appearing that on the following day the said Frederick Purser was required, in the manner directed by the Statutes of the said College, and according to the usage thereof, to make the Declaration in lieu of an Oath prescribed to be taken by a Junior Fellow upon his election, and before his admission to the full right of Fellowship, and when so required did refuse to make such Declaration, and hath not made the same, by reason whereof he was not upon the said day, nor hath he since been, admitted to the said Fellowship: It is further adjudged, determined, and declared, that the said

Frederick Purser, by his refusal to make the said Declaration, as aforesaid, hath *ipso facto* lost his right of Fellowship, and that the said Fellowship thereupon became and now is vacant; and that, save in making the aforesaid Declarations and adjudications, the Prayer of each of the two Petitions hereinbefore in part recited, ought not to be complied with, but that the reasonable costs of the said George M. Minchin and Arthur W. Panton, as Petitioners, and of Frederick Purser, as a Respondent, ought to be paid out of the funds of the said College, and the same are hereby moderated to the sum of £120 for the costs of the said George M. Minchin and Arthur W. Panton, as Petitioners, and to the sum of £60 for the costs of said Frederick Purser, as Respondent.

Dated this 6th day of July, in the year of our Lord 1872.

JOSEPH NAPIER,
Vice-Chancellor of the University (the Chancellor being absent).

R. C. DUBLIN,
Visitor of the College.

CAIRNS,
Chancellor of the University.

APPENDIX.

EXTRACTS FROM THE CHARTER OF KING CHARLES I.

"Quoniam vero nulla Societas absque statutis pro eâdem pie et fideliter gubernandâ diu consistere possit: igitur nos, ex gratiâ nostrâ speciali, statuta prædicta recensenda mandavimus, et eadem sic castigata et in formam redacta, uti jam videre est, manu nostrâ, regali signata, auctoritate regiâ munimus: mandantes prædictis Præposito Sociis et Scholaribus dicti Collegii, et successoribus suis, hisce statutis nostris et non aliis, per omne ævum obedire, nisi pro temporum ratione visum erit nobis, hæredibus vel successoribus nostris aliquid adjicere, tollere, vel mutare aut in aliquibus dispensare, non obstantibus hisce statutis nostris."—(MacDonnell's Statutes, vol. i., p. 16.)

"Similiter etiam si contigerit Sociorum Juniorum et Scholarium aliquem ullo modo deesse et amoveri morte, decessu, resignatione, deprivatione vel alio quovis modo, quod tunc et deinceps bene liceat et licebit Præposito et Sociis Senioribus, vel majori parti eorundem pro tempore existentium, unà cum Præposito, aliam idoneam personam aut alias idoneas personas, in locum vel locos prædicti Socii Junioris aut Scholaris, Sociorum Juniorum aut Scholarium, die Lunæ post Dominicam sanctæ Trinitatis ad tunc proxime sequentem, eligere, nominare, et constituere, juxta Statuta nostra prædicta in hoc casu provisa, et sic de tempore in tempus, toties quoties mors, decessus, resignatio vel deprivatio contigerit; quodque quilibet eorum in hujusmodi locum vel locos. . . . . Sociorum Juniorum vel Scholarium, respective, sic (ut præfertur) electus, habeat et gaudeat ac habere et gaudere valeat et possit, adeo plenam et liberam potestatem, auctoritatemque, in omnibus et per omnia et ad omnia singula agenda, perimplenda et exigenda, prout . . . aliquis alius . . . Sociorum Juniorum vel Scholarium dicti Collegii, pro tempore existentium, quovis modo habere seu gaudere debeant aut possint, juxta tenorem prædictorum Statutorum nostrorum, in hoc casu designatorum."—(*Ibid.*, pp. 20–1.)

* See also the clause in the Letters Patent of King Charles I., *Ibid.*, p. 30.

EXTRACTS FROM THE REVISED STATUTES WHICH CONSTITUTE THE CODE IN THE "DIGEST" OF 1855.

"Volumus et Statuimus, ut in Socios, ii solum cooptentur, de quorum religione, doctrinâ et moribus, tum Præpositus, tum Socii septem Seniores spem bonam animis conceperint, quique gradum Baccalaureatus in Artibus jam susceperint.

"In hâc electione doctiores semper præferuntur indoctioribus, et probiores minus probis, modo cætera respondeant. Nemo autem in eligendorum numerum admittatur nisi qui Coronæ nostræ subditus sit.

"Eligendi potestas (ut antea statuitur), sit penes Præpositum et majorem partem Sociorum Seniorum. Tempore electionis Sociorum, die nempe Lunæ proximè post dominicam Trinitatis, primum, omnes electores, memores juramenti Collegio præstiti, provideant et statuant se neminem in Socium electurum qui sit infamiâ notatus, de hæresi convictus, aut moribus et vitæ consuetudine dissolutus, sed eos duntaxàt quos, teste conscientiâ, idoneos judicaverint."—(pp. 36–7.)

"Præterea nemo in Sociorum numerum eligatur, qui Pontificiæ religioni, quatenùs à Catholicâ et orthodoxâ dissentit, et Romani Pontificis jurisdictioni, per solenne et publicum juramentum non renuntiaverit."—(p. 64.)

"Quoniam ad regimen Collegii permultum conducit legitimam in electionibus formam observari, volumus ut quoties Socii Juniores vel Discipuli eligendi sint, peractâ examinatione per Statuta requisitâ, Præpositus et Socii Seniores ad monitum Præpositi convenient in Sacello, et perlectis Statutis de eorum qualitate et electione, unà cum hoc capite (de formâ et tempore electionum) nomina candidatorum publice a primario Lectore recitabuntur. Quo peracto, quisque elector hoc juramentum dabit:

"Ego" (A. B.) "Deum testor in conscientiâ meâ me Statuta nuper lecta, fideliter et integrè observaturum, et illum vel illos, in Socium vel Socios, &c., nominaturum et electurum, quem vel quos Statuta nuper lecta significare et apertius describere mea conscientia judicabit, omni illegitimâ affectione, odio, amore et similibus sepositis."—(pp. 49–50.)

"Diem vero electionis Sociorum Juniorum, &c., assignamus quotannis diem Lunæ post Dominicam Trinitatis, nisi contigerit tunc temporis Præposituram vacare; quo casu electio tantisper suspendatur, dum novus Præpositus admittatur."—(pp. 51–2.)

"Postridie diei electionis . . . . publice in Sacello Collegii, in præsentiâ omnium Sociorum domi præsentium et

ut intersint monitorum, omnes electi admittantur in plenum jus Juniorum Sociorum et deinceps percipiant ea commoda et fructus qui hujusmodi Sociis ex Statutis præscribuntur."—(pp. 37–8.)

"Jus Sociorum retineant omnes imposterum admittendi in Socios hujus fundationis, durante vitâ naturali, iis conditionibus præstitis, quæ per Statuta requiruntur. Quod si quis ex his, sive Socius, sive Scholaris fuerit, juramentum ordini suo præscriptum præstare recusaverit, jus Societatis, seu Discipulatus, ipso facto amittat," &c.—(p. 38.)

DECLARATIO SOCII.*

"Ego ( ) electus in numerum Sociorum hujus Collegii, profiteor, me sacræ Scripturæ auctoritatem in religione summam agnoscere et quæcunque in sancto Dei verbo continentur vere et ex animo credere; et pro facultate meâ omnibus opinionibus, quas vel Pontificii, vel alii contra sacræ Scripturæ veritatem tuentur, constanter repugnaturum

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"Quinetiam Statutis Collegii obtemperabo, et ea ab aliis observanda (quantum in me est) curabo; scholastica exercitia singula Sociis in Statutis injuncta, diligenter præstabo; et si mihi cura prælegendi aliis, aut officii alicujus ad bonum Collegii regimen obeundi commissa fuerit, eâ studiose perfungar.

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"Studiorum finis erit mihi theologiæ professio, ut ecclesiæ Dei prodesse possim, nisi aliter Deus mentem meam deinceps inclinaverit, aut nisi in numerum eorum, quibus per statuta liceat alia studia amplecti, nominatus et electus fuero."

* This is the form now in use, conformable to the 31 & 32 Vict., c. 72.

THE END.